

1 ARKANSAS DEPARTMENT OF HEALTH
2 COSMETOLOGY SECTION
3 COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
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8 BE IT REMEMBERED that on Monday, the 15th
9 day of September 2014, the meeting of the Arkansas
10 Department of Health, Cosmetology Section, Cosmetology
11 Technical Advisory Committee was held, at 9:00 a.m., at
12 the Arkansas Department of Health, Freeway Medical
13 Building, Suite 801, Little Rock, Pulaski County,
14 Arkansas.
15

16 TECHNICAL ADVISORY COMMITTEE:

17 TRISH ANDERSON, Chair
18 KIMBERLY FORD
19 CYNTHIA STEELE (not present)
20 JESSICA PECK
21 ANGELA JACKSON
22 JESSICA PECK
23 WENDY SULLIVAN

24 REPORTED BY:

25 SUSAN B. WHITSON, CCR
 Arkansas Supreme Court Certificate No. 158
 9810 Woodland Drive
 Mabelvale, Arkansas 72103
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1 APPEARANCES:

2 ON BEHALF OF THE COMMITTEE:

3 ELIZABETH PITMAN, ESQ.

4 HEARING OFFICER:

5 CHRISTIAN HARRIS, ESQ.

6 KENDRA AKIN JONES, ESQ.

7 Office of the Attorney General

8 323 Center Street, Suite 200

9 Little Rock, Arkansas 72201

10

11 Staff Members Present:

12 KELLI KERSEY - Section Chief

13 RENEE MALLORY, ADH Branch Chief, Health Systems Licensing
14 and Regulation

15 TERI PREACHERS - Administrative Specialist

16 CHRISTINE CHILDRES, Administrative Specialist

17 KATHRYN KERSEY (not present)

18 AMANDA WEEKS, Exam Coordinator

19

20 Inspectors Present:

21 LAVONNE LESTER

22 VERA WOOD

23 SONDR A JONES

24 CHRISTOPHER NICKLAUS

25 ROSELYN SMITH

26

27 RESPONDENTS PRESENT:

28 Cynthia Lock-Jones

29 Breanna Richardson

30 Mike Williams

31 Le Nguyen

32 Hai Dao

1 Trinia Surratt

2 Mike Roberts

3 PUBLIC PRESENT:

4 Carla Jones

5 Sheila Krisell

6 Clifteen Barker

7 Jenita Hughes

8 Wade Strawn

9 Scottie Burchett

10 Mandy Strawn

11 Chris Strawn

12 Kim Van Hood

13

14 COURT REPORTER:

15 Susan B. Whitson, CCR

Arkansas Supreme Court Certificate No. 158

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P R O C E E D I N G S

SEPTEMBER 15, 2014, CTAC.

The meeting was called to order by Trish Anderson. Motion was made by Wendy Sullivan to approve the minutes. Second by Kimberly Ford. Unanimous vote.

Motion was made by Kimberly Ford that the paid violations stand as approved. Second by Wendy Sullivan. Unanimous vote.

A discussion was held about the additions made to 2.2, Post Secondary School of Cosmetology, to the Rules and Regulations for Cosmetology in Arkansas.

Adrian Tabb joined the meeting.

Motion was made by Jessica Peck to approve the rule revision for post secondary schools of cosmetology. Second by Kimberly Ford. Unanimous vote. Ms. Pitman noted, for the public, once they get approved by the Board of Health, they will go on the website under Proposed Rules and Regulations and the public can make comments on them there for 30 days.

1 ADMINISTRATIVE HEARINGS

2 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
3 IN THE MATTER OF:

4 ARKANSAS DEPARTMENT OF HEALTH PETITIONER

5 v.

6 GLITZ AND GLAMOUR HAIR & NAILS GALLERY RESPONDENT

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8 MS. ANDERSON: All right. At this time we
9 will turn it over to Elizabeth Pitman for the
10 hearing section.

11 MS. PITMAN: Christian Harris; right?

12 HEARING OFFICER: Sure. Yeah.

13 Good morning, everybody. My name is
14 Christian Harris. I'm an Assistant Attorney
15 General, I work for the Attorney General over
16 in Little Rock; I'm your Hearing Officer for
17 this morning.

18 And the board has set -- originally set
19 nine hearings, I understand eight are still set
20 for today. I and another one of my colleagues
21 is going to come in around the noon hour,
22 Kendra, we will be your Hearing Officers this
23 morning.

24 Let's move to the first hearing. Is
25 everybody -- let's see. Why don't we call the

1 first hearing. It's for the -- this is
2 before -- oh, one other little side note.
3 Everybody, raise your hand if you're here for a
4 hearing, if you don't mind.

5 Everybody, this is -- I'm Christian, like
6 I said. This is Susan, our court reporter. At
7 the outset, let me note, everybody needs to try
8 to talk as loud as possible, and clearly,
9 because she is taking down everything that we
10 say, and in the event that you have an appeal
11 or anything like that or we want to refer back
12 to these proceedings, it's important that Susan
13 hears everything that we say, so she can get it
14 down accurately.

15 Let's see. Let me make another couple of
16 general comments that I usually do for these
17 hearings before we call the first hearing. The
18 board, for all of y'all's hearings, the board
19 is going to make its decision solely on the
20 evidence that we hear today before the board,
21 this includes sworn testimony and any evidence
22 that you might offer or exhibits. This hearing
23 is held under the Administrative Procedures
24 Act, a statute that was elected by the
25 legislature. The strict rules of evidence that

1 would apply in a courtroom don't apply in these
2 proceedings, that means that as the Hearing
3 Officer, I have substantial latitude about the
4 admission of evidence, taking of testimony, I
5 might allow evidence that we wouldn't -- that
6 wouldn't -- a judge would exclude in court, for
7 example, or I could allow photocopies of
8 documents to be admitted instead -- instead of
9 originals, and I might grant some objections or
10 caution the parties to move it along in order
11 to -- in efficiency, especially on a long day
12 like this where we have eight hearings to get
13 through. I already pointed out Susan, our
14 court reporter. Please, you know, don't talk
15 over one another. If the attorney is
16 questioning you, we'll give you the courtesy of
17 trying to let you get your whole statement out
18 before we start to talk. Please, try to do
19 that for your neighbor too, or for the board.
20 Again, that's for the court reporter, of
21 course, in addition to just manners.

22 Let's see. The board doesn't know, for
23 each one of y'all's hearing, the board doesn't
24 know anything about your case except what is in
25 the Order and Notice of Hearing; and for that

1 reason, if there is anything that you have
2 submitted to the staff, or that the staff has
3 in its possession or that you have in your
4 possession that you want the board to consider
5 for your hearing, you need to offer it into
6 evidence today. A helpful way to do that, if
7 you've -- especially if you've conferred with
8 Elizabeth before the hearing, is to do that at
9 the beginning of your presentation. It
10 somewhat works like a regular court proceeding,
11 Elizabeth will go first and she'll call her
12 witnesses and offer any evidence, and then you
13 will have an opportunity to do your side of the
14 story. If you have any evidence that you know
15 you want the board to consider, let's get that
16 out of the way at the beginning of the hearing.

17 Finally, No. 4, these proceedings are
18 subject to the Arkansas Freedom of Information
19 Act, because it's a public hearing. All parts
20 of the hearing, including the deliberations of
21 the board, are open to the public. Let's see.
22 Let's call the first hearing.

23 This is in the matter of -- this is before
24 the Cosmetology Technical Advisory Committee,
25 it's the -- in the matter of Arkansas

1 Department of Health versus Glitz and Glamour
2 Hair & Nails Gallery.

3 Is Glitz and Glamour here?

4 MS. LOCK-JONES: Right here.

5 HEARING OFFICER: Yes, ma'am. Where
6 should we have them? Just right here?

7 MS. PITMAN: Right there.

8 HEARING OFFICER: Sure.

9 And are you going to be a witness or do
10 you have any other witnesses, ma'am?

11 MS. LOCK-JONES: No, just me.

12 Okay. Let's -- Susan, do you mind
13 swearing --

14 COURT REPORTER: Actually, the Hearing
15 Officer should swear.

16 HEARING OFFICER: Oh, sorry. Oh, I swear.
17 Okay.

18 (WHEREUPON, the witnesses were sworn by
19 the Hearing Officer.)

20 HEARING OFFICER: All right. Counsel, for
21 the state, go ahead.

22 MS. PITMAN: One clarifying thing before
23 we start, the board and everyone here that --
24 in the hearing has received everything that's
25 in this packet today, so it's just the

1 documents, the board has received those, and
2 then each respondent has also received those.

3 HEARING OFFICER: Very good. Okay.

4 As counsel for the state -- oh, let's
5 introduce you for the record too, please.

6 MS. PITMAN: Oh, my name is Elizabeth
7 Pitman and I am the Deputy General Counsel for
8 Arkansas Department of Health.

9 HEARING OFFICER: Okay. Any other
10 preliminary stuff that we need to do before we
11 proceed?

12 MS. PITMAN: I -- swear in our witnesses,
13 Christopher Nicklaus --

14 HEARING OFFICER: Oh, I'm sorry. Of
15 course.

16 MS. PITMAN: -- and Kelli Kersey.

17 HEARING OFFICER: Okay. If y'all will
18 raise your right hands, please. Sorry I didn't
19 take care of that.

20 (WHEREUPON, the witnesses were sworn by
21 the Hearing Officer.)

22 MS. PITMAN: And then I also ask to admit
23 the nine-page packet that's in the exhibit
24 packet for Glitz and Glamour.

25 HEARING OFFICER: All right. That will be

1 admitted.

2 (WHEREUPON, DHS-Cosmetology Section
3 Exhibit No. 1, 9 pages, was received in
4 evidence.)

5 MS. PITMAN: And take official notice of
6 the Rules and Regulations of the Cosmetology
7 and Cosmetology Act.

8 HEARING OFFICER: So noted.

9 All right. Are you ready to proceed,
10 counsel?

11 Go ahead.

12 MS. PITMAN: Call Christopher Nicklaus.

13 WHEREUPON,

14 CHRISTOPHER NICKLAUS,
15 having been called for examination, and having been first
16 duly sworn by the Hearing Officer, was examined and
17 testified, as follows:

18 DIRECT EXAMINATION

19 BY MS. PITMAN:

20 Q State your name.

21 A Chris Nicklaus.

22 Q And where do you work?

23 A Arkansas Department of Health.

24 Q In the Cosmetology Section?

25 A Yes.

1 Q And are you an inspector?

2 A Yes, ma'am.

3 Q Did you inspect Glitz and Glamour Hair & Nails
4 Gallery?

5 A Yes, ma'am.

6 Q What day?

7 A 11/26/14 -- I'm sorry. 7/9/14.

8 Q Oh, good. I was going to say wow, time travel.

9 On July 9, 2014. Okay. And, Mr. Nicklaus, when you
10 went out there, what did you find?

11 A They did not have an establishment license posted in
12 the reception area.

13 Q But they did have a current establishment license?

14 A Yes. I called the office for the accurate
15 information.

16 Q Did you note any other violations while you were out
17 there that day?

18 A No, ma'am.

19 Q Okay. And if you look at Page 9 of the packet, did
20 you check that off as a violation that day?

21 A Yes.

22 Q And that's under Rule 5.1(B), consumer information?

23 A Yes.

24 Q Who signed on this inspection sheet that day?

25 A Jesse Young. She was the only stylist that was

1 working that day.

2 Q Okay. Is Jesse Young the owner of Glitz and
3 Glamour?

4 A I don't believe so.

5 Q Okay. Did you happen to meet the owner that day?

6 A No.

7 Q Mr. Nicklaus, did you go back out to Glitz and
8 Glamour, after July 9, 2014?

9 A No.

10 Q Did you have anything else to do with this
11 investigation after you left there that day?

12 A No.

13 Q Did you leave a copy of the inspection report --

14 A Yes.

15 Q -- with Jesse Young?

16 A (Nodding head up and down.)

17 Q Okay. Is there anything else you would like for us
18 to know about your inspection on July 9, 2014?

19 A The salon, they had, like, individual rooms for
20 booths and every door was locked for the stylists that
21 weren't there, and I was under the impression from
22 Ms. Jesse Young that the establishment license was in the
23 owner's room locked up, so I didn't have access to it, so
24 I called the office for the information that I needed.

25 Q Okay. So Ms. Young stated that day that there was a

1 salon license but it was behind a locked door?

2 A Yes.

3 Q Okay. Just want to make sure I'm understanding.

4 And you could not verify that on July 9?

5 A Right.

6 MS. PITMAN: Okay. I don't think I have
7 any other questions.

8 Pass the witness.

9 HEARING OFFICER: Sure. Let's see, and,
10 ma'am, I'm so sorry, I didn't get your name for
11 the record.

12 MS. LOCK-JONES: Cynthia Jones, owner of
13 Glitz and Glamour.

14 HEARING OFFICER: Okay. Ms. Jones, do you
15 have any questions for -- for the witness?

16 MS. LOCK-JONES: No. Well, I just need
17 some clarification, that's all.

18 HEARING OFFICER: Okay. If you don't
19 mind, let's wait until it's -- until the state
20 is done with their case and then we'll address
21 that.

22 MS. LOCK-JONES: Okay.

23 HEARING OFFICER: So this witness is
24 through.

25 Call -- go ahead and call your next

1 witness.

2 MS. PITMAN: Kelli Kersey.

3 WHEREUPON,

4 KELLI KERSEY,

5 having been called for examination, and having been first

6 duly sworn by the Hearing Officer, was examined and

7 testified, as follows:

8 THE WITNESS: Kelli Kersey, Arkansas

9 Department of Health, Cosmetology Section,

10 Section Chief.

11 DIRECT EXAMINATION

12 BY MS. PITMAN:

13 Q Thank you, Ms. Kersey.

14 And did Mr. Nicklaus report back to you after he did
15 his inspection on July 9?

16 A Yes, ma'am.

17 Q And what did you do?

18 A Well, once we get the inspection sheet, we will just
19 look and, generally -- I mean, the inspector, we take the
20 inspector's word for this, he doesn't take a picture of
21 that because he obviously can't take a picture of that,
22 and then we assess the fine and send her the violation
23 letter.

24 Q Okay. Do you have a copy of the rules, Ms. Kersey?

25 Are you familiar with them?

1 A Sure. I think I have a packet in front of me.

2 Q Okay. Okay. I'm trying to find Rule 5.

3 COURT REPORTER: I can't hear you.

4 BY MS. PITMAN:

5 Q I'm trying to find Rule 5.

6 Okay. Under Rule 5.1(B), I believe, 2, which is
7 where the salon lines -- license must be posted, and on
8 your inspection sheet, it says, "in the reception area."
9 Is that correct, does it need to be in a reception area?

10 A Correct.

11 Q Okay. And why is that? I mean --

12 A So it's really for the public to know --

13 Q Okay.

14 A -- if the -- if the -- if the salon has a license or
15 not.

16 Q Okay. So after you got the inspection report and --
17 you sent out a violation notice?

18 A Yes.

19 Q And that was on August 1, 2014?

20 A Correct.

21 Q How much is the recommended violation for the
22 penalty today?

23 A Fifty dollars.

24 Q And where does that come from?

25 A We have a general set fee that we assess.

1 Q Is that also in the Rules and Regulations?

2 A Yes.

3 Q Okay. And then did you send out a notice, an Order

4 and Notice of Hearing today?

5 A Yes, ma'am.

6 Q And that's -- appears to be Page 1 -- 3 --

7 A Yes.

8 Q -- of the hearing packet?

9 A Uh-huh.

10 Q And what day did you send that out?

11 A I'm not certain. Sorry.

12 Q Okay.

13 A I think it was received on -- August 26.

14 Q Okay.

15 A Yes. Sorry.

16 Q Thank you.

17 And it was signed for by Ms. Jones?

18 A Yes.

19 Q And what day was that?

20 A August 28th.

21 Q Okay. And this Order and Notice of Hearing, does it

22 tell Ms. Jones what day and time the hearing will be?

23 A Correct.

24 Q September 15 at 9 a.m., in Room 801 of this

25 building?

1 A Yes.

2 Q And it notifies her that the violation is not having
3 a current salon license posted?

4 A Correct.

5 Q Okay. Ms. Kersey, is there anything else you would
6 like us to know today?

7 A No.

8 Q Did Ms. Jones contact you about this violation?

9 A She did. She actually requested a hearing.

10 Q Okay. Did she say anything when she contacted you?

11 A I did not speak to her. No.

12 MS. PITMAN: Okay. I don't think I have
13 any other questions.

14 HEARING OFFICER: All right. Ms. Jones,
15 do you have any questions for this witness?

16 MS. LOCK-JONES: No.

17 HEARING OFFICER: Okay.

18 MS. PITMAN: We rest.

19 HEARING OFFICER: Okay. The state has
20 rested. Ms. Jones, now is the time for you to
21 do your side of the case, and it sounds like
22 you had a concern you wanted to ask about. So
23 do you have -- first let me ask you if you have
24 any -- I think I already covered this. You
25 don't have any other witnesses?

1 MS. LOCK-JONES: No.

2 HEARING OFFICER: So if you would just
3 like to address the board and testify, that
4 will be fine.

5 MS. LOCK-JONES: Okay.

6 HEARING OFFICER: Go right ahead.

7 WHEREUPON,

8 CYNTHIA JONES,

9 having been called for examination, and having been first
10 duly sworn by the Hearing Officer, was examined and
11 testified, as follows:

12 DIRECT TESTIMONY

13 THE WITNESS: Okay. What I have -- I need
14 to know where to place my license. I've been
15 in business for 20 years, I have never been
16 written up for anything. The last -- I think
17 we got new inspectors the last two years, I've
18 had two different new inspectors, and my
19 license have been posted -- I have pictures
20 here, my license has been posted. Each one of
21 our rooms are individual and they are locked.
22 I'm usually there every time the inspector
23 come. I haven't been able to be at work on
24 Wednesdays, I have a sick mom. But all of our
25 license are posted outside of our doors ever

1 since we've had -- once we got the new little
2 ID cards, she asked me to place them on our
3 mirrors in each room, since we have cards and
4 license, to place the cards, because they said
5 people been doing hair with no license or
6 whatever, so they want an ID card and the
7 license beside each one in each room, and then
8 I go through and open up the rooms and she
9 inspect each room. That's the way I've been
10 doing it all these years. So to me it's just
11 like, okay now, now they want them back outside
12 the door. I need to know where to place them.

13 HEARING OFFICER: Let me interrupt. Are
14 these pictures that you brought with you,
15 ma'am?

16 THE WITNESS: Yes.

17 HEARING OFFICER: Do you want to -- would
18 you like to enter those into evidence for the
19 record?

20 THE WITNESS: Sure.

21 HEARING OFFICER: And we can either make
22 copies of those or we can put your originals
23 into the record. Which would you prefer?

24 MS. LOCK-JONES: I don't need them back.

25 HEARING OFFICER: Okay. Let's mark

1 those -- why don't you give them -- walk around
2 and give them to Susan here and we'll mark
3 those as Defendant's Exhibit A, or however you
4 want -- however you do it, Susan.

5 (WHEREUPON, Respondent's Exhibit A was
6 marked and received in evidence.)

7 HEARING OFFICER: Thank you. Let's see.

8 Okay. So the way these usually work, we
9 don't -- there -- there is not a -- a -- a huge
10 opportunity for back and forth between the
11 board and the licensee, since this is sort of
12 like a court hearing, but I take it that --
13 I -- I think the board probably understands
14 what your position is. Are there any
15 questions, and I neglected, unfortunately, any
16 questions for Ms. Jones from the board?

17 MS. PITMAN: I need to ask her a few
18 after --

19 HEARING OFFICER: Oh, sure. Okay.

20 THE WITNESS: I have one.

21 HEARING OFFICER: Yes, ma'am.

22 THE WITNESS: Because, like I say, in
23 the -- in the rule, it says "reception or work
24 station," so that's why she asked us to put --
25 and with that being a hallway with busy

1 traffic, people -- she didn't want people to
2 take the ID, take the license, so that's why
3 she asked me -- I think those license came out
4 in '07, '08, so they have been inside our room
5 ever since then.

6 HEARING OFFICER: All right. Let's let
7 Elizabeth take a look and I'll allow you to
8 cross. Sorry I neglected that.

9 MS. PITMAN: Oh, that's okay.

10 CROSS-EXAMINATION

11 BY MS. PITMAN:

12 Q Ms. Jones, I'm taking a look at these pictures here.
13 It looks like there is some sort of document posted
14 outside of the doors here?

15 A Those are the licenses. That's what they are.

16 Q What kind of licenses?

17 A That --

18 Q Is it a practitioner's license or the license --

19 A Cosmetology license.

20 Q Okay. What about the salon license? The license --

21 A They are right beside it.

22 Q Where?

23 A It's the picture -- the -- the first -- there is two
24 side by side up on the wall. In that picture -- did I
25 print that picture off?

1 MS. ANDERSON: Yes.

2 THE WITNESS: Okay. Okay.

3 BY MS. PITMAN:

4 Q Okay. I have the one here that's actually marked,
5 it looks like it has two --

6 A Yes. Those are the ID cards that we were
7 supposed -- we had to change and put them on the inside;
8 but now they are -- the license are on the outside, but
9 our ID cards are still on the inside.

10 Q Okay. And those are practitioner's licenses?

11 A Those --

12 Q Is that correct? The one that says that you can be
13 a cosmetologist, not that your business can be open as an
14 establishment. Do you have both of those license?

15 A Yes.

16 Q Okay. Where is the one that says your business can
17 be open? Which one of these pictures?

18 A Should be the -- the one in the hallway, the second
19 one.

20 Q The one that says nine or two?

21 A I can't see from here.

22 HEARING OFFICER: Do you want to come over
23 and take a look? Come on over.

24 BY MS. PITMAN:

25 Q Yes, you can come over and look, yeah, because I

1 can't tell either; so --

2 A I didn't get that one, it's No. 1.

3 COURT REPORTER: I can't hear you.

4 THE WITNESS: But it's just like this,
5 there's two of them and they are side by side.

6 BY MS. PITMAN:

7 Q Okay. And you didn't take a picture of that today?

8 A No.

9 Q Okay.

10 A It's on my phone.

11 Q It's on your phone?

12 A Uh-huh. Want to look at my phone?

13 Q Well, we can look at it. I don't know how we're
14 going to admit that.

15 MS. PITMAN: Did you guys want to look at
16 these?

17 THE WITNESS: That's my license and the
18 shop license side by side.

19 MS. PITMAN: All right. Can we pass that
20 around?

21 THE WITNESS: Sure.

22 BY MS. PITMAN:

23 Q Okay. And can you just describe for us where this
24 is in your salon?

25 A That's when you come in the door, when you're coming

1 down the hallway, it's the first room on the right, which
2 is mine, and there is the shop license, personal license,
3 and it goes down, everyone has that.

4 Q Okay.

5 A That's what we originally had.

6 Q Was that there that day that Mr. Nicklaus came out?

7 A No. No.

8 Q Okay. So you moved it since then?

9 A They are back outside.

10 Q Okay. Thank you.

11 A So I just need to know where to place them, because
12 we put them inside and outside.

13 Q Where was it the day he came?

14 A They were all inside.

15 MS. PITMAN: Okay. Thanks. That's really
16 all. I wanted to clarify what the pictures
17 depicted.

18 HEARING OFFICER: Sure. Let's -- and I'll
19 note for the court reporter, the board and --
20 and counsel for the state are examining a
21 photograph that's on Ms. Jones' telephone, on
22 her phone that she's described for the record.

23 MS. PECK: Whoa.

24 THE WITNESS: Did it come off?

25 HEARING OFFICER: Well, I may have -- I

1 may have thumbed it, but --

2 Did you have anything else? And I should
3 ask Ms. Jones. Ms. Jones, do you want -- do
4 you want us to figure out how to admit that
5 photograph into evidence like the rest of
6 these?

7 THE WITNESS: Sure, I can --

8 HEARING OFFICER: Let's go off the record
9 for a -- yeah, just for a second.

10 COURT REPORTER: Just send it to me.

11 HEARING OFFICER: Okay. We'll make sure
12 that you have Susan's email address, if that's
13 all right with the board, we'll leave the
14 record open for the limited purpose of getting
15 that into the record afterwards if you will
16 promise -- if you will promise to email it
17 today, please.

18 THE WITNESS: Okay.

19 HEARING OFFICER: Great. Okay. Any more
20 cross?

21 MS. PITMAN: (Shaking head from side to
22 side.)

23 HEARING OFFICER: Any more questions from
24 the -- from the board for Ms. Jones?

25 MS. FORD: In one of your pictures that

1 you submitted, the cards, the ID cards, those
2 are the old license?

3 THE WITNESS: Uh-huh.

4 MS. FORD: Are those still being posted,
5 even though they are expired?

6 THE WITNESS: Yes. No one told me to
7 remove them. They have been there every --
8 they check them every year. She's always
9 checked them every year, because they were
10 right beside -- they wanted -- I think they
11 were looking for a picture, faces, to make sure
12 that person is working, and she wanted them
13 there to make sure it was that face with the
14 name, so we just left them there.

15 MS. FORD: Okay. Also in the event of
16 your absence -- you said normally you're in the
17 salon to open the doors --

18 THE WITNESS: Yeah, that was my first
19 time.

20 MS. FORD: -- for the inspection.

21 THE WITNESS: Uh-huh.

22 MS. FORD: In your absence, does someone
23 else have access to be able to do that?

24 THE WITNESS: Now, I had a lady, which was
25 like a -- a friend of mine, she use to, but she

1 was in nursing school at the time, so she
2 wasn't there.

3 HEARING OFFICER: Any other questions for
4 the board of Ms. Jones?

5 MS. SULLIVAN: I do.

6 HEARING OFFICER: Yes, ma'am.

7 MS. SULLIVAN: Do you have a reception
8 area in the salon?

9 THE WITNESS: I don't have a receptionist.
10 It's a -- a seating area.

11 MS. SULLIVAN: But there is a reception
12 area?

13 THE WITNESS: Yes.

14 MS. SULLIVAN: Okay.

15 HEARING OFFICER: And we'll -- let's note
16 for the record that that was board member?

17 MS. SULLIVAN: Wendy Sullivan.

18 HEARING OFFICER: And then --

19 MS. FORD: Kim Ford.

20 HEARING OFFICER: -- Kim Ford was the
21 first questioner.

22 Any other questions from the board?

23 All right. And I should have asked
24 before, and since we're being informal in doing
25 this, any questions for the state's witnesses

1 in light from the board, I forgot to ask if
2 y'all had any questions. You can reopen those
3 witnesses briefly if you had any questions.

4 BOARD MEMBERS: No.

5 HEARING OFFICER: All right. Very good.
6 Anything else, Ms. Jones?

7 THE WITNESS: No, I'm just wondering
8 where -- I guess they stay out in the hallway?
9 Is that the best place?

10 HEARING OFFICER: All right. So let's --
11 so let's show that the -- the respondent has
12 rested. Any need -- any need for closing
13 arguments?

14 MS. PITMAN: No.

15 HEARING OFFICER: All right. At that --
16 at this point, let's declare the record closed
17 except for the photograph that Ms. Jones is
18 going to email later today for the court
19 reporter, and -- and closed and complete,
20 subject to that, and let's go into a brief
21 recess for the board to deliberate.

22 (WHEREUPON, the Committee retired to
23 deliberate, off the record, from 9:25 a.m. to
24 9:31 a.m., and returned with the following
25 motion.)

1 HEARING OFFICER: Okay. Let's go back on
2 the record and I'll turn it over to the chair
3 woman.

4 MS. ANDERSON: Okay. At this time we do
5 have a motion, and --

6 MS. FORD: In the case, in the matters
7 dealing with Glitz and Glamour Hair and Nails
8 Gallery and the 50-dollar fee for the salon
9 license not being posted in the reception area,
10 and due to the wording in our regulations, I
11 would make a motion that the 50-dollar fee be
12 waived at this time.

13 MS. ANDERSON: And do I hear a second?

14 MS. SULLIVAN: I second that motion.

15 MS. ANDERSON: Okay. I have a motion by
16 Kim Ford and a second by Wendy Sullivan that we
17 would waive this fee at this time, and that
18 motion, I would ask -- call for a vote.
19 Adrian?

20 MR. TABB: Aye.

21 MS. ANDERSON: Jessica.

22 MS. PECK: Aye.

23 MS. FORD: Aye.

24 MS. SULLIVAN: Aye.

25 MS. ANDERSON: Thank you. And the motion

1 passes.

2 HEARING OFFICER: All right. That
3 concludes that matter, ma'am. Thank you for
4 coming before the board.

5 MS. LOCK-JONES: Thank you.

6 HEARING OFFICER: And if you'll just get
7 with Susan about her email address at some
8 point.

9 MS. ANDERSON: Mr. Harris, can we give her
10 just our -- our counsel so she doesn't have to
11 come before the board again?

12 HEARING OFFICER: Sure. Oh, yeah,
13 absolutely, and do that, too.

14 MS. ANDERSON: At this time we would like
15 you to go back to the rules and regulations and
16 review those, make sure that you understand it
17 does, yes, as Kim said, Rule No. 3 of that
18 section does say old license does not need to
19 be posted, so the pictures are not displayed.
20 If the inspector needs to see you, who you are,
21 he's going to ask for a driver's license, so
22 those need to be discarded. They do need to go
23 outside your door just so that in case you
24 weren't there --

25 MS. LOCK-JONES: Okay.

1 MS. ANDERSON: It can be inspected.

2 Someone probably needs to have a key so it's
3 accessible to the inspector. They are only
4 there very, very short periods of time and
5 only, you know, once to twice a month -- twice
6 a year, so you still do need to have that
7 consumer report out there for people to know
8 that you are good, clean --

9 MS. LOCK-JONES: Okay.

10 MS. ANDERSON: -- and your report shows
11 that there is nothing on it.

12 Thank you for coming.

13 MS. LOCK-JONES: Thank you.

14 MS. PITMAN: Ms. Jones -- Ms. Jones, we'll
15 send you an order just telling you what the
16 board decided today --

17 MS. LOCK-JONES: Okay.

18 MS. PITMAN: -- so that it's formal for
19 you. Okay?

20 MS. LOCK-JONES: Okay. Thank you. Thank
21 you.

22 (WHEREUPON, at 9:33 a.m., the
23 above-entitled proceedings were concluded.)

24 ---o---

25

1 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
2 (CTAC)

3 IN THE MATTER OF:

4 ARKANSAS DEPARTMENT OF HEALTH PETITIONER

5 v.

6 BREANNA RICHARDSON RESPONDENT

7 ---o---

8 HEARING OFFICER: All right. Let's
9 proceed with the next hearing. Next hearing is
10 in the matter of Arkansas Department of Health
11 versus Breanna Richardson. Is Breanna
12 Richardson -- are you here? Yes, ma'am. Will
13 you come up and sit there, please.

14 And, Ms. Richardson, do you have any
15 witnesses or will it just be you today?

16 MS. RICHARDSON: No, it's just me.

17 HEARING OFFICER: Okay. Let me -- let me
18 swear you in. If you'll raise your right hand,
19 please.

20 (WHEREUPON, the witness was sworn by the
21 Hearing Officer.)

22 HEARING OFFICER: Counsel, for the state,
23 are you ready to proceed?

24 MS. PITMAN: Yes.

25 HEARING OFFICER: Okay. Please call your

1 first witness.

2 MS. PITMAN: Before we do that, I believe
3 Ms. Smith and Ms. Kersey and the inspector --

4 HEARING OFFICER: Oh, yeah, I need to
5 swear you all in. Let's see. Yeah. Y'all
6 raise your right hand. I know, I just don't
7 want to swear witnesses today.

8 Please -- please raise your right hands.

9 (WHEREUPON, the witnesses were sworn by
10 the Hearing Officer.)

11 MS. PITMAN: And there is a nine-page
12 packet behind the tab marked Breanna
13 Richardson, I believe, yes, behind the tab
14 marked Breanna Richardson, and I would like to
15 admit those as exhibits.

16 HEARING OFFICER: That will be admitted.

17 (WHEREUPON, DHS - Cosmetology Section
18 Exhibit No. 1, 9 pages, was received in
19 evidence.)

20 MS. PITMAN: And take official notice of
21 the rules and regulations and the cosmetology
22 act.

23 HEARING OFFICER: That will be noted.

24 WHEREUPON,

25 ROSALYN SMITH,

1 having been called for examination, and having been first
2 duly sworn by the Hearing Officer, was examined and
3 testified, as follows:

4 DIRECT EXAMINATION

5 BY MS. PITMAN:

6 Q Ms. Smith, please tell us your name and where you
7 work.

8 A Rosalyn Smith, Arkansas Department of Health
9 Cosmetology, Inspector.

10 Q Okay. And, Ms. Smith, as a cosmetology inspector,
11 did you go out and inspect Smart Style No. 1195?

12 A Yes.

13 Q Is that one of the Walmart salons?

14 A Yes.

15 Q Okay. And you inspected it on what day?

16 A 6/12/14.

17 Q Okay. And when you went out to inspect Smart Style,
18 what did you find?

19 A I gave a warning on the garbage refusal, and I also
20 saw Ms. Richardson, she was cutting a client with no neck
21 strip, and we had also No. 21, as far as the -- the neck
22 brushes that we were told to tell them not to use.

23 Q Okay. I'm looking at Page 5 of the packet, it's
24 your inspection report. Ms. Smith, you have numbers
25 written out beside No. 20 and No. 21. What do those

1 numbers mean?

2 A Number 20 is Ms. Richardson's license number, and
3 No. 21 is Mr. Kevin Parker's license number.

4 Q And just for clarification, today we're only here
5 for Ms. Richardson's neck strip or towel used to protect
6 client violations?

7 A Yes.

8 Q Okay. If you flip to Page 6, you have a bunch of
9 names here. Was anybody there -- it looks like it was
10 their license number and the expiration dates; is that
11 correct?

12 A Yes.

13 Q Okay. Doesn't look like anybody had an expired
14 license?

15 A No.

16 Q Okay. Did you talk to Ms. Richardson that day about
17 this violation regarding the neck strip?

18 A Yes, ma'am.

19 Q Okay. Is Ms. Richardson here today?

20 A Yes, ma'am.

21 Q And can you tell us who she is?

22 A The young lady sitting here.

23 Q In the flowery jacket at the side of the table?

24 A In the flower jacket.

25 MS. PITMAN: Okay.

1 HEARING OFFICER: I'll let the record
2 reflect the identification.

3 MS. PITMAN: Thank you.

4 BY MS. PITMAN:

5 Q And what did you and Ms. Richardson discuss on that
6 day?

7 A We discussed the violation and she also -- we also
8 talked about -- and just employment as far as, you know,
9 her job and my job.

10 Q Okay. About the violation specifically, what did
11 you guys talk about?

12 A The neck strip that they have to use, a neck strip
13 to protect the client from the cape, they use the --
14 using the neck strip so that the client will be protected
15 from the cape.

16 Q And when you discussed that with Ms. Richardson, did
17 she appear to understand what you were talking about?

18 A She understood.

19 Q Okay. Ms. Smith, did you go back out to Smart Style
20 after 6/12/14?

21 A No.

22 Q Have you spoke to Ms. Richardson since that day?

23 A No.

24 Q Okay. Is there anything else about that inspection
25 you would like us to know?

1 A No.

2 MS. PITMAN: Pass the witness.

3 HEARING OFFICER: All right.

4 Ms. Richardson, would you like to ask any
5 questions of the inspector?

6 MS. RICHARDSON: No.

7 HEARING OFFICER: All right. Any
8 questions from the board for this witness?

9 MS. ANDERSON: I do have a question.
10 Trish Anderson.

11 I would like to know, after their license
12 number, you have NW. What does NW stand for,
13 for my information, just --

14 THE WITNESS: Not working.

15 MS. ANDERSON: Okay. Thank you.

16 HEARING OFFICER: Any other questions?

17 All right. Let's call your next witness.

18 MS. PITMAN: Call Kelli Kersey.

19 WHEREUPON,

20 KELLI KERSEY,

21 having been called for examination, and having been first
22 duly sworn by the Hearing Officer, was examined and
23 testified, as follows:

24 THE WITNESS: Kelli Kersey, Arkansas
25 Department of Health, Cosmetology Section,

1 Section Chief.

2 DIRECT EXAMINATION

3 BY MS. PITMAN:

4 Q Ms. Kersey, did Ms. Smith come back and report to
5 you about her inspection of Smart Style No. 1195?

6 A She did.

7 Q Okay. And what did you do after you received that?

8 A We sent out a violation letter to Ms. Anderson and
9 Mr. Parks -- Parker, sorry.

10 Q Okay.

11 A Richardson. I'm sorry. Richardson, not Anderson.

12 Q And just to take care of Mr. Parker, he's not here
13 today?

14 A Correct. Sorry. Yeah.

15 Q And he's not -- not requested a hearing as of today?

16 A Correct.

17 Q Okay. So we're just here on Ms. Richardson, and you
18 sent her out a violation letter?

19 A Yes, ma'am.

20 Q Okay. And that violation letter appears to be on
21 Page 7?

22 A Yes.

23 Q And it makes a recommendation for a penalty or a
24 violation, what is that?

25 A Fifty dollars.

1 Q Thank you. And that is the standard penalty in our
2 rules and regulations?

3 A Yes, ma'am.

4 Q Did you also send her an Order and Notice of
5 Hearing?

6 A We did.

7 Q Okay. That's on Page 1 of the packet?

8 A Uh-huh.

9 Q What day did you send that?

10 A August 26.

11 Q Okay. And did Ms. Richardson receive it?

12 A She did -- it does not look like she signed for
13 that.

14 Q Okay. If you look at the product and tracking
15 information, it does say delivered, what --

16 A It was delivered on September 2nd.

17 Q Okay. And Ms. Richardson is here today?

18 A Yes, ma'am.

19 Q Okay.

20 A She's -- when we sent the violation letter, she
21 actually requested a hearing.

22 Q Okay. And that's indicated On Page 4; is that
23 right?

24 A Correct.

25 Q And on the notice -- Order and Notice of Hearing it

1 tells her to appear today, Monday, September 15 at 9
2 a.m., here in Room 801 in the Freeway Medical Building?

3 A Right.

4 Q And it also tells her that she is being brought for
5 a hearing today because she did not use a sanitary neck
6 strip on the client?

7 A Correct.

8 Q Have you discussed this violation with
9 Ms. Richardson, Ms. Kersey?

10 A I have not.

11 Q Do you have anything else you would like us to know
12 today?

13 A I don't.

14 MS. PITMAN: No other questions.

15 HEARING OFFICER: Okay. Let's see.

16 Ms. Richardson, would you like to ask any
17 questions of this witness?

18 MS. RICHARDSON: (Shaking head from side
19 to side.)

20 HEARING OFFICER: Very well. Any
21 questions from the board?

22 All right then. Go ahead and call your
23 next witness.

24 MS. PITMAN: No other witnesses, the
25 state -- or the department rests.

1 HEARING OFFICER: Okay. Let's see.

2 Ms. Richardson, why don't you go ahead and
3 address the board now or testify, unless you
4 have a witness that you would like to call.

5 WHEREUPON,

6 BREANNA RICHARDSON,
7 having been called for examination, and having been first
8 duly sworn by the Hearing Officer, was examined and
9 testified, as follows:

10 DIRECT TESTIMONY

11 THE WITNESS: Okay. I remember the
12 inspector coming in right when I was getting
13 through -- well, finished with a haircut, and I
14 was trying -- I was curious to know who she was
15 so I was trying to hurry up and get my client
16 in and out. I had just got finished with my
17 client and I remember some employees coming
18 over and crying, and I'm like who is she, she
19 was the inspector. So I let her walk around
20 and they made a big fuss about water -- the
21 word water could not be written on our water
22 bottles, we could not have the haircutting
23 brush to brush hair off the clients' neck, and
24 so after she went around and inspected everyone
25 I did go up to her and I asked her, I said, "Is

1 there anything wrong with me? Have you seen
2 anything wrong with my station?" And she came
3 over, she opened my drawer, she said the only
4 thing she can see wrong is I need to use my
5 blow dryer to dust the hair out, and that was
6 it. And we did talk about how long she was an
7 inspector, and I was just talking to her, but
8 she never addressed the -- the neck strip
9 violation. And I use a neck strip on every
10 haircut. I've been doing hair since 2010, and
11 I would not make a big fuss about coming to
12 court, I would have paid the 50 dollars had
13 that had been true.

14 HEARING OFFICER: All right. Any
15 questions for the witness?

16 CROSS-EXAMINATION

17 BY MS. PITMAN:

18 Q I just want to clarify, Ms. Richardson, your
19 contention here today is that Ms. Smith is saying
20 something that didn't happen that day?

21 A Uh-huh.

22 MS. PITMAN: Okay. No other questions.

23 HEARING OFFICER: Any questions from the
24 board for this witness?

25 Okay. Any other -- I understand that you

1 don't have any other witnesses, so at this time
2 any closing arguments?

3 MS. PITMAN: No.

4 HEARING OFFICER: All right. Then we're
5 ready to deliberate. Let's -- oh, I'm sorry.
6 Let's see. No, I think we're ready to
7 deliberate. Let's go off the record and let
8 y'all deliberate.

9 MS. FORD: If I could?

10 HEARING OFFICER: Sure.

11 MS. FORD: Could I cross-examine the
12 inspector?

13 HEARING OFFICER: Sure, yeah, any -- yeah.
14 And or --

15 MS. FORD: Or ask a question. Yes.

16 WHEREUPON,

17 ROSALYN SMITH,
18 having been recalled for examination, and having been
19 first duly sworn by the Hearing Officer, was examined and
20 testified, as follows:

21 MS. FORD: Per your inspection sheet,
22 there was no neck -- neck strip or towel while
23 the service was going on. Could you please
24 elaborate on what you saw?

25 THE WITNESS: She had a -- a gentleman in

1 her chair and he just had on a cape, a regular,
2 not a plastic cape, just a black cape, and I
3 was -- as I did my inspection I noted it, I
4 didn't take a picture, but it wasn't a cape or
5 a neck strip on him.

6 MS. ANDERSON: I have a question for you,
7 Ms. Smith. Okay. So you just said she's
8 cutting a gentleman's hair or the gentleman was
9 in her chair?

10 THE WITNESS: She was cutting his hair.

11 MS. ANDERSON: She was cutting his hair.
12 You said there was a cape on him?

13 THE WITNESS: It was a cape.

14 MS. ANDERSON: Okay.

15 THE WITNESS: With no towel or no neck
16 strip.

17 MS. ANDERSON: Okay. All right. Thank
18 you.

19 HEARING OFFICER: Any other questions from
20 the board or follow up from the state for any
21 of these witnesses?

22 MS. PITMAN: If I may?

23 REDIRECT EXAMINATION

24 BY MS. PITMAN:

25 Q I just have one follow up, Ms. Smith. You said you

1 marked the inspection sheet as you were doing the
2 inspection. Can you tell us how you typically do that?
3 Do you wait until you finish the inspection to make your
4 marks on the inspection sheet or do you do it as you're
5 going?

6 A Well, I usually introduce myself and then I will do
7 a round and I will check, you know, and take pictures of
8 whatever violations I see, if I have, you know,
9 violations. And then I will come back and write the
10 license and then I will go back and explain marks or ask
11 questions and then mark them off.

12 Q Okay. And is it typically part of your inspection
13 procedure that you talk to the people there who had the
14 violations?

15 A Yes.

16 Q Okay. And you did it that day?

17 A Yes.

18 Q Okay. And your testimony earlier was that you did
19 tell Ms. Richardson she wasn't using a neck strip?

20 A Yes.

21 Q Okay. Do you remember any part of that
22 conversation? I know it was a while ago.

23 A I remember telling her and explaining, because like
24 she said, the young lady, she did started crying -- she
25 started crying, and I explained, you know, this is hers,

1 because, you know, she wasn't using the neck strip, and
2 this is his because he has a brush that he can't use, so
3 I explained it to all three of them. They were all -- we
4 were all standing there together, so I explained it.

5 Q Another lady at the salon started crying?

6 A Yes, ma'am.

7 Q Okay. And, Ms. Smith, when you left the inspection
8 report at Smart Style that day --

9 A Ma'am?

10 Q -- did you leave a copy of the inspection report at
11 Smart Style that day?

12 A Yes.

13 Q It appears somebody signed for it but not
14 Ms. Richardson; is that correct?

15 A Yes.

16 Q Michelle Rainbolt who is she, or Rainbolt?

17 A I'm not sure who she is but she was there that day.
18 I'm not sure who she is.

19 Q And, Ms. Smith, you don't have a photo today, is
20 there a reason for that?

21 A No. There is not a reason. I just didn't take a
22 picture of a person.

23 Q You didn't take a picture of the man?

24 A Yeah. No, I didn't.

25 Q Why not?

1 A I was assuming because it was just a person, I
2 shouldn't take a picture of a person.

3 MS. PITMAN: Okay. Thanks. Nothing else.

4 HEARING OFFICER: Any questions from the
5 board in light of those questions?

6 MS. ANDERSON: Did you take a picture of
7 the neck brush that was from the other person?
8 Did you take pictures of those?

9 THE WITNESS: I don't recall but I could
10 go through my phone and check.

11 MS. ANDERSON: Okay. Thank you.

12 HEARING OFFICER: Any other questions?

13 Is the board ready to deliberate?

14 MS. PITMAN: Yes.

15 HEARING OFFICER: Let's go off the record
16 for the board's deliberation now.

17 Okay. Thank you.

18 (WHEREUPON, the Committee retired to
19 deliberate, off the record, from 9:47 a.m. to
20 9:49 a.m., and returned with the following
21 motion.)

22 HEARING OFFICER: Okay. Ready to go back
23 on the record?

24 Okay. I'll turn it over to the
25 chairwoman.

1 MS. ANDERSON: Okay. At this time we have
2 a motion and the -- in the case before us, and
3 I'll turn that over to Jessica.

4 MS. PECK: I would like to make a motion,
5 the \$50 for no neck strip stand.

6 MR. TABB: I second.

7 MS. ANDERSON: And I have a second by
8 Adrian. Okay. All those in favor Adrian?

9 MR. TABB: Aye.

10 MS. PECK: Aye.

11 MS. FORD: Aye.

12 MS. SULLIVAN: Aye.

13 MS. ANDERSON: Okay. So that motion
14 carries.

15 HEARING OFFICER: All right. Then, at
16 this time, I'll declare the record to be closed
17 and complete. And one other thing, the
18 decision was unanimous, it's going to be
19 reduced to writing and service will be made or
20 attempted upon all the parties.

21 Ms. Richardson, if you would like to
22 appeal the decision, you can take it under the
23 Administrative Procedures Act, that's Arkansas
24 Code Annotated §25-15-201.

25 If there are no other questions or

1 comments, this particular hearing is closed and
2 concluded. Thank you, ma'am, for coming today.

3 (WHEREUPON, at 9:50 a.m., the
4 above-entitled proceedings were concluded.)

5 ---o---

1 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
2 (CTAC)
3 IN THE MATTER OF:
4 ARKANSAS DEPARTMENT OF HEALTH, PETITIONER
5 v.
6 PERFECT 10 NAILS

7 ---o---

8 HEARING OFFICER: All right. Let's move
9 on with the third hearing, that's in the matter
10 of the Arkansas Department of Health versus
11 Perfect 10 Nails. Is Perfect 10 here today?
12 Perfect 10?

13 Normally we would send the bailiff to
14 sound to the hallway. Does the board want to
15 defer that one and move on to the next one or
16 do you want -- do you typically just proceed
17 without them; right?

18 MS. PITMAN: (Nodding head up and down.)

19 HEARING OFFICER: All right. Sorry about
20 that.

21 If the state wants to proceed, go ahead
22 and let's swear in the witnesses. How about I
23 swear them individually. Okay. Let's see who
24 is going to be a witness? Ms. Kersey and?

25 MS. PITMAN: Ms. Smith.

1 HEARING OFFICER: Ms. Smith.

2 MS. KERSEY: Can I make a statement before
3 we get started about pictures?

4 HEARING OFFICER: What's that?

5 MS. KERSEY: About pictures? We will
6 never take a picture of a client.

7 MS. PITMAN: Don't worry about that.

8 MS. KERSEY: Okay. Yeah. I just wanted
9 to say that, there is never going to be a
10 picture of a client.

11 MS. ANDERSON: Can we take a neck picture,
12 just their neck?

13 MS. KERSEY: No.

14 MS. ANDERSON: The only other pictures
15 that we have of people is that -- those people
16 that file a complaint.

17 MS. PITMAN: They send their own pictures.

18 MS. ANDERSON: You would have to have
19 their permission to take their picture.

20 MS. KERSEY: Correct.

21 MS. ANDERSON: We did not have their
22 permission.

23 MS. KERSEY: Okay. Sorry.

24 HEARING OFFICER: That's okay.

25 MS. KERSEY: No, you can slap me.

1 HEARING OFFICER: No, we probably should
2 have taken us off record, but that's okay.
3 Let's, y'all raise your right hand.

4 (WHEREUPON, the witnesses were sworn by
5 the Hearing Officer.)

6 HEARING OFFICER: Okay. Please proceed.

7 MS. PITMAN: Thank you.

8 We have a packet behind Perfect 10 Nails,
9 appears to be 17 pages long. I ask that that
10 be admitted.

11 Okay. It's only 16 pages long. I'm
12 sorry. Apparently I have an extra page. Ask
13 that that be admitted.

14 HEARING OFFICER: It's admitted.

15 (WHEREUPON, DHS - Cosmetology Section
16 Exhibit No. 1, 16 pages was received in
17 evidence.)

18 MS. PITMAN: And then take official notice
19 of the rules and regs and the Cosmetology Act.

20 HEARING OFFICER: So noted.

21 MS. PITMAN: Call Ms. Smith.

22 WHEREUPON,

23 ROSALYN SMITH,

24 having been called for examination, and having been first
25 duly sworn by the Hearing Officer, was examined and

1 testified, as follows:

2 DIRECT EXAMINATION

3 BY MS. PITMAN:

4 Q Ms. Smith, please tell us your full name.

5 A Rosalyn Smith.

6 Q And where do you work?

7 A The Department -- Arkansas Department of Health,
8 Cosmetology.

9 Q Okay. And did you do an inspection of Perfect 10
10 Nails?

11 A Yes.

12 Q Okay. What day?

13 A May 8, 2014.

14 Q Okay. Do you have an inspection report sheet on
15 Page 11? Okay. Page 11; is that correct?

16 A Yes.

17 Q Tell us what you found that day?

18 A Oh, we -- I had, I think, a practitioner without a
19 current license, a practitioner working without a current
20 license, a young lady that's unlicensed, a young lady
21 working without license, no salon license in the
22 reception area, no practitioner license at the stations,
23 no health and safety rules posted, used files in drawers,
24 used instruments placed without labels, and a -- a dirty
25 table.

1 Q Thank you. We'll take these starting at the top.

2 You said that you don't -- you had a practitioner working
3 without a current license?

4 A Yes.

5 Q Who was that?

6 A I think it's Andy, I can't pronounce, can't see that
7 last name, Andy Anh.

8 Q Okay. You have his name marked in the bottom corner
9 Andy Anh, Driver's License No. 933160194, no license?

10 A Yes.

11 Q Okay. So he showed you his driver's license?

12 A He showed me his driver's license.

13 Q But he did not have any type of practitioner
14 license?

15 A No.

16 Q Okay. And then his name is also by allowing a
17 person to work without a current Arkansas license. Is
18 that a cosmetology license?

19 A He was working without a current -- his name is by
20 the one, "allowing a person to work without a
21 cosmetology -- a current cosmetology license."

22 Q So was his -- did he have a license and it was
23 expired or did he just not have a license?

24 A He did not have a license -- he had license that was
25 expired but they -- he didn't have them there.

1 Q Okay. So how do you know he had a license that was
2 expired?

3 A By calling the office.

4 Q Okay. So you called the office and they confirmed
5 that?

6 A Yes.

7 Q And then Ms. Kim Tran or Tran, she was -- tell me
8 about her.

9 A When I walked in, she was working on a client; she
10 had no license at all.

11 Q Okay. And did you talk to Ms. Tran?

12 A She ran out the building.

13 Q So kind of describe what happened.

14 A She was working on a client and when she found --
15 after I introduced myself, she left.

16 Q Okay. How do you usually introduce yourself?

17 A "Hi, my name is Rosalyn Smith. I'm with the
18 Arkansas Department of Health," and I hand them a card, a
19 business card.

20 Q Okay. And do you let them know you're there to
21 inspect the establishment?

22 A Yes, ma'am. Yes.

23 Q And then she just ran out?

24 A She left.

25 Q Okay. So she didn't run, she just left?

1 A She just left.

2 Q Okay. Did she come back at any point during your
3 inspection?

4 A She did not come in -- yeah, she did come back, and
5 I got her driver's license.

6 Q Okay. And so she had a valid driver's license?

7 A She had a license from a different state.

8 Q Okay. But it appeared to be -- there was nothing
9 weird about it?

10 A No, ma'am.

11 Q Okay. And you cannot confirm that she had a
12 cosmetology license of any kind?

13 A No.

14 Q What was she doing when she got up and left? Was --
15 what was she doing?

16 A You -- as far as working?

17 Q Uh-huh.

18 A She was doing a client's nails.

19 Q Okay. Pedicure or manicure?

20 A It was a manicure, I think.

21 Q Okay. And then moving on to the -- there were no
22 health and safety rules posted anywhere?

23 A No.

24 Q Okay. And there was no salon license posted?

25 I'm just going through your checks.

1 A No.

2 Q And no practitioner's license?

3 A No.

4 Q Whose practitioner's license were posted?

5 A They -- well, they had them in their purse or
6 wallet, in their -- on their body --

7 Q But they didn't --

8 A -- but they weren't posted anywhere.

9 Q Thank you.

10 All right. Going through these pictures, Ms. Smith,
11 starting with Picture No. 1, which is Page 12 of the
12 packet, which violation does this coincide with?

13 A That will be the treatment table, sanitize before
14 and after each use.

15 Q Okay. Can you tell me kind of what we're seeing
16 here?

17 A It's a treatment table and the towel, an orange
18 towel that was kind of dirty and wrinkled all up, but it
19 wasn't cleaned after the use.

20 Q Okay. Did you ever see a client on this table?

21 A No.

22 Q Okay. You just saw this towel?

23 A Yes.

24 Q Did you ask them about this at all?

25 A I -- yeah, I tried to talk to them about it.

1 Q What did you try to ask them or tell them about it?

2 A I went -- after I wrote the violations, I went
3 through and explained it the best I could to them.

4 Q Okay. Did they appear to understand?

5 A I don't know if he understood or not.

6 Q Okay. On page -- we'll get back to that in a
7 minute. On Page 13 you have another picture. Can you
8 tell us what this is a violation of or showing?

9 A On 13, it's the used files in the little basket.

10 Q That's this little basket hanging here?

11 A Yes.

12 Q Okay. Did they say anything about either one,
13 Page 12 or Page 13, when you pointed it out to them?

14 A I -- I don't recall them saying anything --

15 Q Okay.

16 A -- in defense about it.

17 Q What should they do with used nail files like that?

18 A Dispose after each use.

19 Q Okay.

20 A After one person.

21 Q And is that a trashcan also in Picture 13 there?

22 A Yes.

23 Q And the nail files are not in the trashcan; is that
24 right?

25 A No.

1 Q Okay. Page 14; what is this?

2 A That is a -- it's a manicure brush, pedicure -- a
3 manicure brush and it's just laying out not in a covered
4 container or -- it's just out, laying out.

5 Q Okay. And Page 15, what is that?

6 A That is, I guess it's a wax station.

7 Q Uh-huh.

8 A But they didn't have any estheticians or
9 cosmetologists that work there.

10 Q Does this show a --

11 A They are all licensed manicurists.

12 Q Okay. And Page 16?

13 A That is supplies that's out, not in a covered or
14 labeled container.

15 Q Okay. Okay. All right. You said you weren't sure
16 if they understood. Why is that, Ms. Smith?

17 A I think it's just the language.

18 Q Okay. So did they not speak very good English, is
19 that what --

20 A (Shaking head from side to side.) They didn't
21 appear to speak very good English.

22 Q Okay. We'll just leave it at that.

23 Did you leave them with this inspection report?

24 A Yes.

25 Q And who signed for it?

1 A Mr. Andy.

2 Q Okay.

3 A Andy Anh.

4 Q And who is Andy Anh? Is he the owner?

5 A I'm assuming he's the owner.

6 Q Okay. You didn't find that out that day, though?

7 A No.

8 Q Okay. Is there anything else about your inspection
9 on May 8 you would like us to know?

10 A No.

11 MS. PITMAN: I have no further questions.

12 HEARING OFFICER: Any questions from the
13 board for the witness?

14 MS. ANDERSON: I have a question. Trish
15 Anderson.

16 Do we have any other violations for this
17 nail salon at this time, previous? Do you
18 know?

19 THE WITNESS: This is my first inspection
20 with them.

21 MS. ANDERSON: Okay.

22 HEARING OFFICER: Any other questions from
23 the board?

24 You can call your second witness, I guess.

25 MS. PITMAN: Call Kelli Kersey.

1 THE WITNESS: Kelli Kersey, Arkansas
2 Department of Health, Cosmetology Section,
3 Section Chief.

4 DIRECT EXAMINATION

5 BY MS. PITMAN:

6 Q Thank you, Ms. Kersey.

7 And Ms. Smith came back on May 8 and told you about
8 her inspection?

9 A Correct.

10 Q Okay. And you sent a violation letter?

11 A We did.

12 Q Okay. And that violation letter appears to be on
13 Page 9 --

14 A Yes.

15 Q -- 8?

16 A 8, yes.

17 Q Okay. What is the proposed penalty?

18 A \$500.

19 Q Okay. Can you tell us how you arrived at that
20 penalty?

21 A It's \$250 for allowing a person to work without a
22 license; the health and safety rules weren't posted, \$50;
23 the salon license wasn't posted, that's \$50; the
24 treatment table is \$50; all supplies and instruments that
25 are not disinfected are disposed of immediately, are \$50;

1 and all used instruments placed in labeled containers is
2 \$50, which equals \$500.

3 Q And that is -- there is a spreadsheet on Page 6 that
4 reflects that?

5 A Correct.

6 Q And then did the owner of Perfect 10 Nails request a
7 hearing?

8 A He did.

9 Q And that is on Page 7 of the packet?

10 A Correct.

11 Q Okay. Who signed for that?

12 A It appears to be Andy Anh.

13 Q And does the paperwork reflect he's the owner?

14 A Yes. The paperwork does reflect that he is the
15 owner.

16 Q Okay. And no one is here today from Perfect 10
17 Nails?

18 A Not -- not that I'm aware of.

19 Q Did you send them an Order and Notice of Hearing?

20 A We did.

21 Q Okay. And on that Order and Notice of Hearing, did
22 you tell them to appear today, Monday, September 15, at
23 9 a.m.?

24 A Yes.

25 Q Room 801 of this building?

1 A Correct.

2 Q And listed out all of the violations that Ms. Smith
3 has already gone through?

4 A Yes, ma'am.

5 Q And that's on Page 1 through 3 of the packet?

6 A Correct.

7 Q Have you spoken to anyone from Perfect 10 Nails
8 regarding these violations?

9 A I have not.

10 Q Is there anything else, Ms. Kersey, that you would
11 like us to know today?

12 A This salon does not have any previous violations.

13 MS. PITMAN: No other questions.

14 HEARING OFFICER: Any questions from the
15 board?

16 All right. Any more witnesses?

17 MS. PITMAN: No.

18 HEARING OFFICER: Let's go off the record
19 and let the board deliberate then.

20 (WHEREUPON, the Committee retired to
21 deliberate, off the record, from 10:04 a.m. to
22 10:09 a.m., and returned with the following
23 motion.)

24 HEARING OFFICER: All right. Let's go
25 back on the record.

1 Turn it over to the chair woman.

2 MS. ANDERSON: Okay. At this time we do
3 have a motion, and that's going to be made by
4 Kimberly Ford.

5 MS. FORD: In the matter versus Arkansas
6 Department of Health and Perfect 10 Nails, I
7 would like to make a motion that the fines
8 assessed at \$500 stand, and that a 30-day
9 re-inspection from the date of notification
10 sent out to the owner.

11 MS. ANDERSON: And that second?

12 MS. PECK: Oh, I'll second. Sorry.

13 MS. ANDERSON: And Jessica Peck is making
14 that second. Now we'll take a vote. Adrian?

15 MR. TABB: Aye.

16 MS. PECK: Aye.

17 MS. PITMAN: I can't vote, but we need to
18 make specific findings of fact as well.

19 MS. ANDERSON: Okay. Okay. So let's go
20 back to the motion. Can we go back to the
21 motion, Kim --

22 MS. FORD: Yes.

23 MS. ANDERSON: -- and be -- be specific?

24 MS. FORD: Yes. In the matter of Arkansas
25 Department of Health versus Perfect 10 Nails,

1 in the findings of allowing a person to work,
2 the 250-dollar fine that was assessed by the
3 office or the section, also in the matter of
4 health and safety rules posted in a reception
5 area and the salon license posted in the
6 reception area, \$50 individually on those two
7 counts, the treatment tables being sanitized
8 before and after each use, \$50, all supplies
9 and instruments that cannot be disinfected are
10 disposed of immediately after use, \$50, and
11 with the nonelectrical items, all used
12 instruments -- instruments being placed in
13 labeled containers, \$50, all equaling \$500, and
14 that a 30-day re-inspection per notice being
15 sent out.

16 MS. ANDERSON: Okay. That's our motion by
17 Kimberly Ford and a second by --

18 MS. PECK: I'll second that.

19 MS. ANDERSON: -- Jessica Peck. And then
20 I'll take the vote. Adrian?

21 MR. TABB: Aye.

22 MS. PECK: Aye.

23 MS. FORD: Aye.

24 MS. SULLIVAN: Aye.

25 MS. ANDERSON: That motion passes.

1 HEARING OFFICER: All right. Let's let
2 the record reflect that the decision was
3 unanimous, it will be reduced to writing and
4 service will be made or attempted to be made
5 upon all parties, and we'll note for the record
6 here, even though they aren't here, that if the
7 respondent wants to appeal the decision, it's
8 taken according to the Administrative
9 Procedures Act.

10 If there is no other questions or
11 comments, this hearing is closed. Anybody need
12 a break?

13 MS. PECK: Yes.

14 HEARING OFFICER: Okay. Let's take a --
15 10 minutes long enough?

16 All right.

17 (WHEREUPON, at 10:12 a.m., the
18 above-entitled proceedings were concluded.)

19 ---o---

20 MS. ANDERSON: We're back on the record.
21 If everyone will come back to attention, we
22 will turn it over to our Hearing Officer,
23 Mr. Harris.

24 HEARING OFFICER: Sure. Let's call the
25 next hearing. I have it down as in the -- In

1 The Matter of Arkansas Department of Health
2 versus Best Nails. Best Nails? Best Nails
3 here? Best Nails going once -- oh, is this --
4 are we -- is that the next one? Sorry.
5 Backing up.

1 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
2 (CTAC)

3 IN THE MATTER OF:

4 ARKANSAS DEPARTMENT OF HEALTH PETITIONER

5 v.

6 VA NAILS RESPONDENT

7 ---o---

8 HEARING OFFICER: It's Arkansas Department
9 of Health versus VA Nails. VA Nails here?

10 MR. NGUYEN: Yep.

11 HEARING OFFICER: Step right up to the
12 podium there. Apologize for that.

13 MS. FORD: Before we get started, I've
14 been in that establishment so --

15 COURT REPORTER: I can't hear.

16 MS. FORD: I've been in this
17 establishment, so I don't know if I need -- if
18 they would like for me to be excused from this
19 or not.

20 HEARING OFFICER: I would probably address
21 that to the nail salon. I don't -- as the
22 Hearing Officer, it's not up to me.

23 MS. PITMAN: I have not talked to you
24 about this, so can we talk about it or --

25 HEARING OFFICER: Sure. Do you want to go

1 off the record for a minute and then discuss it
2 amongst yourselves or should be we -- let's go
3 off the record for two minutes and --

4 MS. FORD: I mean, I'm not involved in
5 this, but I just want it to be known so that,
6 you know, it's fair.

7 MS. PITMAN: Okay.

8 MS. FORD: And it's fair for them.

9 MS. SULLIVAN: Does she need to recuse
10 herself or --

11 MS. PITMAN: Do you feel like you could --

12 MS. FORD: Absolutely I don't have a
13 problem being right down rules and regulations.
14 I have no problem.

15 HEARING OFFICER: Let's go back on the
16 record, and you -- I think we -- Susan, did we
17 get that disclosure on the record the last
18 time?

19 COURT REPORTER: Yes, sir.

20 HEARING OFFICER: Okay. Who's the -- the
21 respondents, do y'all have any formal objection
22 to Board Member Ford serving on the -- serving
23 on this, given that she's been in your
24 establishment?

25 MR. WILLIAMS: Okay. With you? She's

1 been to that nail salon. But he's a new owner
2 of the salon, so I don't know that he owned it
3 when you were there, so my guess would be that
4 it's all right.

5 MS. FORD: Okay.

6 HEARING OFFICER: All right. Having put
7 that on the record, let's have everyone who's
8 going to be a witness this time around to all
9 raise your right hand at the same time, whoever
10 is going to talk.

11 MR. WILLIAMS: Yeah.

12 (WHEREUPON, the witnesses were sworn by
13 the Hearing Officer.)

14 HEARING OFFICER: All right. Let's see.
15 Any need for opening statements?

16 All right. Let's proceed. Go ahead and
17 proceed, Counsel.

18 MS. PITMAN: Okay. We have a packet that
19 is 23 pages long behind the V.A. Nails tab in
20 the binder that I would ask to admit these
21 documents and pictures.

22 HEARING OFFICER: That's admitted.

23 (WHEREUPON, DHS - Cosmetology Section
24 Exhibit No. 1, 23 pages, was received in
25 evidence.)

1 MS. PITMAN: And then I would take
2 official notice of the Rules and Regulations
3 for Cosmetology and Cosmetology Act.

4 HEARING OFFICER: So noted.

5 MS. PITMAN: And I'll call Christopher
6 Nicklaus.

7 HEARING OFFICER: Please proceed.

8 WHEREUPON,

9 CHRISTOPHER NICKLAUS,
10 having been called for examination, and having been first
11 duly sworn by the Hearing Officer, was examined and
12 testified, as follows:

13 DIRECT EXAMINATION

14 BY MS. PITMAN:

15 Q Please state your name.

16 A Christopher Nicklaus, Arkansas Department of Health,
17 Cosmetology Section, Cosmetology Inspector.

18 Q Mr. Nicklaus, did you inspect VA Nails?

19 A Yes.

20 Q And on what day?

21 A On 7/2/14.

22 Q I'm sorry. I think somebody was getting coffee. On
23 what day?

24 A 7/2/14.

25 Q Thank you.

1 And, Mr. Nicklaus, was that in response to a
2 complaint or was that a routine inspection?

3 A It was in response to a complaint.

4 Q Okay. What was the complaint that you received?

5 A I have to read it again. I'm sorry.

6 Q Could you tell us what page you're reading from the
7 packet?

8 A Page 9.

9 Q Thank you.

10 A The complaint was this customer had went in and he
11 had been cut during the pedicure procedure, and that they
12 were using implements that had not been disinfected.

13 Q Okay. And there were pictures accompanying that
14 complaint?

15 A Yes.

16 Q And those are pictures number -- looks like there
17 are --

18 A Number -- from --

19 Q Seven pictures, Page 10 through 16, is that correct?

20 A Yes.

21 Q Okay. Mr. Nicklaus, did you in any way verify what
22 these pictures are showing?

23 A I mean, I can't say whether he was cut with -- I
24 have no idea.

25 Q Okay. But these pictures and this email was the

1 basis of your inspection that you inspected?

2 A Yes.

3 Q And that's why they are included in this packet?

4 A Yes.

5 Q Okay. Going back to that inspection, what did you
6 find that day?

7 A When I went into the salon, there was a young lady
8 removing nail polish from a young woman's feet, and when
9 I went in and announced who I was and from the Department
10 of Health, she bolted for the back door.

11 Q Okay. So it was a young lady, can you tell us kind
12 of what she looked like? What was -- what did she look
13 like?

14 A She was a young Vietnamese lady.

15 Q Okay. And what was she doing when you came in? I
16 think you said --

17 A Removing polish from a lady's feet.

18 Q Okay. Were they at a pedicure station?

19 A Yes.

20 Q Okay. And then what did you say when you came in?

21 A I said I'm from the Arkansas Department of Health,
22 my name is Chris Nicklaus, and I'm here for an inspection
23 on a complaint that we received in the office from a
24 customer.

25 Q And did she say anything?

1 A No. She got up and ran out the door.

2 Q And she literally like --

3 A She literally ran, tripped over the pedicure stool
4 she was sitting in, nearly broke her neck, but she ran
5 out the door. Yes.

6 Q Okay. Did anybody tell you who she was?

7 A They said that she did not work there.

8 Q Okay. And it looks like on your inspection sheet,
9 which is marked as Page 7, you have a note, it's the
10 first starred note. What does that say?

11 A "Observed Kim Khah, I guess that's how you say that,
12 double dipping a wax stick," and then I wrote underneath
13 that, "all items that cannot be disinfected must be
14 disposed of immediately."

15 Q Okay. And the last one?

16 A All -- I'll just read it to you. "All files and
17 nailbrushes must be disposed of after each use.
18 Nailbrushes must be in a covered container." And the
19 very last one, part of it is cut off, "Salon license not
20 posted in reception area."

21 Q Okay. And then there is one on the other side?

22 A "All trashcans must have a lid in working areas,"
23 and I can't read the next line, it's cut off.

24 Q Okay. Mr. Nicklaus, you have the notes here that
25 say what the violations are?

1 A Uh-huh.

2 Q You also have checkmarks?

3 A Uh-huh.

4 Q Can you tell us what you marked as checks?

5 A Number 7 was having an unlicensed person; No. 6 is
6 allowing a person to work without an Arkansas license.

7 Q And before you go on, Mr. Nicklaus, is that the lady
8 that ran out?

9 A Yes.

10 Q Okay. Was there anybody else in the salon that day
11 that was unlicensed?

12 A No.

13 Q Keep going.

14 A Number 2, under 5.1, "Salon license posted in
15 reception area;" No. 13a, "Sufficient number of covered
16 waste receptacles;" 21a, "All supplies and instruments
17 that cannot be disinfected or disposed of immediately
18 after use;" and 22, "All used instruments placed in
19 labeled containers;" and 24, "Liquids, creams, etc.,
20 stored and labeled in clean, closed containers."

21 Q Thank you, Mr. Nicklaus.

22 On the salon license posted in reception area, did
23 they have a valid salon license?

24 A Yes.

25 Q Okay. But it was not posted?

1 A Correct.

2 Q Were their practitioner's license posted?

3 A I do believe so, yes.

4 Q Did you take pictures?

5 A Yes.

6 Q And they look like they start on Page 20?

7 A Correct.

8 Q Start with Picture 1, Page 20, can you tell us what

9 this shows?

10 A It's a basket in the front of the salon with used

11 flip flops and toe separators in it.

12 Q And it says Rule 13a on that picture. What is that

13 rule?

14 A All supplies and instruments that can be disposed

15 of -- or that can't be disinfected are disposed of

16 immediately, and all trashcans must have a lid.

17 Q Okay. Where is the trashcan?

18 A It's considered -- I consider that a trashcan.

19 Q So the flip flops are in a trashcan?

20 A Yes.

21 Q So they were disposed of but it's not covered?

22 A It's not covered.

23 Q Okay. So I was trying to clarify, sorry about that.

24 Okay. Picture 2, Rule 21?

25 A Uh-huh.

1 Q What does this show us?

2 A Used nail files and buffers in a drawer with clean
3 items.

4 Q Okay. Okay. Yeah. And then Picture 3?

5 A Picture 3 is a bottle of cuticle oil with a brush in
6 it and it's not covered.

7 Q And what is that -- what rule does that coincide
8 with?

9 A 24a, "Liquids, creams, etc., stored and labeled in
10 clean, closed containers."

11 Q And what about Rule 22, which is what's marked on
12 the picture?

13 A I'm sorry?

14 Q Rule 22 is what's marked on the picture?

15 A Yes.

16 Q So -- okay, you said 24?

17 A Did I say 24?

18 Q So is it Rule 22 or 24? I'm sorry.

19 A 22 is not -- oh. Oh, okay, yes, it's 22, actually.
20 It's the nail brush being in the cuticle oil for 22, and
21 then 24 for liquids, creams, etc., stored and labeled in
22 clean covered containers. Sorry.

23 Q Okay. No. That's okay.

24 And then Picture 4, which says Rule 24, what is that
25 showing us?

1 A They have a jar of Barbicide with dirty brushes in
2 it that's not covered.

3 Q And so Rule 24, it has to be covered?

4 A Yes.

5 Q And I think that's it, Mr. Nicklaus; is that
6 correct?

7 A Yes.

8 Q And the inspection sheet where you marked all of
9 this and made your notes, did you leave a copy of that
10 with the salon that day?

11 A Yes.

12 Q You have a note where it says signature, "Refused to
13 sign." Who did you speak with?

14 A This gentleman here to the right.

15 Q Okay. In the white shirt?

16 A Yes.

17 Q Okay. And is he the owner of the salon or
18 establishment?

19 A Yes. I believe so.

20 Q And he would not sign?

21 A No.

22 Q But you did leave a copy of this with him?

23 A Yes.

24 Q Did you go back out to VA Nails after July 2nd?

25 A No.

1 Q And have you had any more dealings with the owner or
2 any other person in that salon?

3 A Since? No.

4 Q And just so we're all clear on this, Mr. Nicklaus,
5 were you ever able to identify the lady who ran out of
6 the salon?

7 A No.

8 MS. PITMAN: No other questions.

9 HEARING OFFICER: Respondent, do either
10 one of you have any questions for the witness?

11 MR. WILLIAMS: Yes.

12 HEARING OFFICER: And if you don't mind,
13 sir, state your name for the record before you
14 start.

15 MR. WILLIAMS: Oh, sure. Sure. I'm Mike
16 Williams, and I'm a friend of Mr. Le's. But
17 I've been a licensed nail tech for 20 years, so
18 I've been doing it a long time.

19 HEARING OFFICER: Very good.

20 MR. WILLIAMS: Do I --

21 HEARING OFFICER: Go ahead. Thank you.

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q So I -- I guess we should start -- start from the
25 top, there's plenty of things to look at here. On this

1 first one, allowing a person to work without an Arkansas
2 license.

3 A Uh-huh.

4 Q When you came into the -- his salon, like how far
5 was she from where you entered the salon?

6 A From me to you.

7 Q So pretty close?

8 A I mean it was pretty close, yes.

9 Q So, you know, you said that you actually saw her
10 taking off nail polish?

11 A Yes. She was working on a customer.

12 Q Are you sure that's what she was doing?

13 A Yes, the customer even asked, where did she go? She
14 wasn't done taking my nail polish off.

15 Q Because that lady, you know, her function in the
16 salon was not to do nails, it was to clean up the
17 pedicure chairs, and so it -- it's certainly strange that
18 she would have been taking polish off someone. Because,
19 I mean, she actually did have a job, it was to clean the
20 pedicure chairs after each customer and, you know, just
21 kind of clean up.

22 And the reason she ran out the door, Mr. Le was
23 explaining this to me, she doesn't have -- doesn't have a
24 green card, so when you came in, it spooked her and
25 she -- I mean, she thought you were INS instead of

1 Arkansas Department of Health, so she left.

2 But, you know, he remembers it differently. He --
3 he remembered her there at the pedicure station --

4 MS. PITMAN: I object, because you're
5 questioning the witness --

6 MR. WILLIAMS: Oh.

7 MS. PITMAN: -- but you're not
8 questioning, you're testifying.

9 MR. WILLIAMS: Oh, okay. Okay. Sorry.

10 HEARING OFFICER: Yeah, let's -- I'll
11 sustain that.

12 MR. WILLIAMS: Yeah.

13 HEARING OFFICER: And if you could -- if
14 you have a witness from which to elicit that
15 testimony, that's great, but otherwise, let's
16 stick and try as best we can --

17 MR. WILLIAMS: Okay.

18 HEARING OFFICER: I understand you're not
19 a -- a lawyer here.

20 MR. WILLIAMS: Sure.

21 HEARING OFFICER: Go ahead.

22 BY MR. WILLIAMS:

23 Q All right. So I guess we'll just move on to the
24 second one. On the -- on the next one, the salon license
25 posted in the reception area, Mr. -- Mr. Le -- I don't

1 know how you guys do this, but he -- he has a receipt
2 where he applied for the license, the establishment
3 license --

4 MS. PITMAN: I'm going to object again.
5 You're testifying again instead of asking
6 questions.

7 MR. WILLIAMS: Oh, so what do we do with
8 this?

9 HEARING OFFICER: That -- if you want to
10 admit that into evidence --

11 MR. WILLIAMS: Uh-huh.

12 HEARING OFFICER: -- then we will need to
13 make -- probably make a copy of it or unless
14 you don't mind giving up the original of it and
15 we'll mark it.

16 MR. WILLIAMS: Okay. I would just --

17 HEARING OFFICER: And you can ask -- you
18 can ask Mr. Le about it if you want to call him
19 as a witness.

20 (WHEREUPON, Respondent's Exhibit No. 1 was
21 received in evidence.)

22 BY MR. WILLIAMS:

23 Q Okay. I was just curious if he showed you this that
24 day?

25 A (Shaking head from side to side.)

1 Q Did -- did he have this that day?

2 A (Shaking head from side to side.)

3 Q No?

4 Okay. And then so I guess we'll move on to the next
5 one. The waste receptacle, you said that you believed
6 that to be the trashcan where they were putting the
7 slippers and stuff; right?

8 A Uh-huh.

9 Q In -- in the rules, it says a sufficient number of
10 covered trashcans?

11 A Uh-huh.

12 Q So did he have some?

13 A Yes, he did have some covered trashcans.

14 Q Yeah. But it doesn't say all trashcans have to be
15 covered, it just says sufficient amount?

16 A It says --

17 Q So how do you make that determination?

18 A It says a sufficient number, all trashcans have to
19 have a lid.

20 Q So it does say all trashcans have to have a lid?

21 A All trashcans must have a lid.

22 Q Where -- where does it say all trashcans have to
23 have a lid, where is that?

24 A It's Rule 5.1c, No. 13.

25 Q 5.1c? Is that something we have a copy of here?

1 A It's in your rules and regulations.

2 MS. PITMAN: I have a copy here.

3 HEARING OFFICER: I don't have one.

4 MS. PITMAN: Would you like to look at my
5 copy of the rules?

6 MR. WILLIAMS: Oh, sure. Thanks.

7 MS. PITMAN: It's right here.

8 MR. WILLIAMS: Okay.

9 BY MR. WILLIAMS:

10 Q You know, just reading this, I still don't see where
11 it says all trashcans must be covered.

12 A Sufficient number of covered waste receptacles.

13 Q Right. You know, a sufficient number is a little
14 ambiguous, I don't know exactly who determines that, but
15 it doesn't say all?

16 A It says a sufficient number of covered waste
17 receptacles.

18 Q And what's --

19 A And don't know what you want me to -- how you want
20 me to answer that.

21 Q What's -- what's the purpose of having the trashcans
22 covered?

23 A It states in our rules and regulations, 13a, a
24 sufficient number of covered waste receptacles. Why that
25 rule was put in there, I couldn't tell you; I didn't make

1 it, I just enforce it.

2 MR. WILLIAMS: Okay. And so let's see,
3 where were we at?

4 So I guess that's all the questions I
5 have. That's it.

6 HEARING OFFICER: Very good.

7 MS. PITMAN: I have some questions.

8 HEARING OFFICER: Sure. Go ahead and
9 redirect.

10 REDIRECT EXAMINATION

11 BY MS. PITMAN:

12 Q Okay. Mr. Nicklaus, I just have one question. Are
13 you trained -- well, I have a couple, but about just one
14 issue. Are you trained in doing inspections, what rules
15 and regulations you have to enforce?

16 A Yes.

17 Q And regarding the covered number of waste
18 receptacles, what did your training tell you?

19 A All trashcans -- I just go by the rules and
20 regulations, that all trashcans, a sufficient number of
21 trashcans must be covered.

22 Q Okay. And so when you were trained, they told you
23 you have to have covered trashcans?

24 A Correct.

25 Q Okay. And it's not your job to interpret the rules

1 and regulations; is it?

2 A Correct.

3 MS. PITMAN: Okay. No further questions.

4 HEARING OFFICER: Any follow-up cross in
5 light of those questions?

6 MR. WILLIAMS: No.

7 HEARING OFFICER: Okay. Thank you.

8 Any questions from the board for this
9 witness?

10 MS. FORD: I do.

11 HEARING OFFICER: Member Ford.

12 MS. FORD: Kim Ford. The young lady that
13 you said was receiving a service --

14 THE WITNESS: Uh-huh.

15 MS. FORD: -- what service was she
16 receiving?

17 Was she seated at a manicure table --

18 THE WITNESS: She was --

19 MS. FORD: -- or a pedicure chair?

20 THE WITNESS: She was seated at a pedicure
21 chair.

22 MS. FORD: Okay. And they were removing
23 polish from what part of her body?

24 THE WITNESS: Her feet.

25 HEARING OFFICER: Any other questions from

1 the board for this witness?

2 Any other questions from either party in
3 light of Member Woman Ford's question?

4 All right.

5 MS. ANDERSON: I do have a question.

6 Sorry.

7 HEARING OFFICER: Sure.

8 MS. ANDERSON: Trish Anderson. For
9 Mr. Williams or -- I'm sorry, I don't know your
10 name.

11 MR. WILLIAMS: Le Nguyen.

12 MS. ANDERSON: Le Nguyen.

13 HEARING OFFICER: Well, let's -- actually,
14 Chair Woman, if you don't mind, let's finish
15 this witness and --

16 MS. ANDERSON: Oh, excuse me.

17 HEARING OFFICER: -- and wait until they
18 put on their case.

19 MS. ANDERSON: Okay. I'm sorry.

20 HEARING OFFICER: Hold that thought.

21 MS. ANDERSON: Yes.

22 HEARING OFFICER: Any other questions for
23 Mr. Nicklaus -- Nichols, Nickleson --

24 THE WITNESS: Nicklaus.

25 HEARING OFFICER: I'm sorry.

1 MS. ANDERSON: Nicklaus.

2 HEARING OFFICER: So sorry.

3 Any more?

4 All right. Then let's call your next
5 witness, then.

6 MS. PITMAN: Call Kelli Kersey.

7 WHEREUPON,

8 KELLI KERSEY,

9 having been called for examination, and having been first
10 duly sworn by the Hearing Officer, was examined and
11 testified, as follows:

12 THE WITNESS: Kelli Kersey, Arkansas
13 Department of Health, Cosmetology Section,
14 Section Chief.

15 DIRECT EXAMINATION

16 BY MS. PITMAN:

17 Q Ms. Kersey, were you aware of the complaint received
18 on June 27th?

19 A I was.

20 Q And were you aware of Mr. Nicklaus' inspection that
21 was conducted on July 2nd?

22 A Yes, ma'am.

23 Q And once you received this inspection back from
24 Mr. Nicklaus, what did you do?

25 A We actually did not send out a violation letter with

1 this inspection because this was multiple violations in a
2 row. I believe it's the last three inspections he's had
3 violations, this salon has. So on the third we do not
4 send a violation letter, we only send a Notice of
5 Hearing.

6 Q Okay. So we'll talk about the Notice of Hearing in
7 a minute.

8 A Okay.

9 Q Starting on Page 17, you said he had past due
10 violations?

11 A Yes, ma'am.

12 Q Okay. Does Page 17 start --

13 A It's --

14 Q -- where you're talking about those?

15 A Yes.

16 Q Tell me what you see here.

17 A On Page 17 you see the violations that were on
18 4/17/14, he got -- they were paid on 6/29/14.

19 Q Okay.

20 A There was nine violations on that inspection.

21 Page 18, the inspection was 6/18/13, two violations
22 on that inspection, they were paid on 9/6/13.

23 On Page 19, he had a violation on 11/14/12, they
24 paid that violation on 12/14/12.

25 Q Okay. And just so the record is clear, Ms. Kersey,

1 all of these violations were paid and we're not here on
2 any of this today?

3 A Correct.

4 Q Okay. And these were here so that the board
5 knows --

6 A That -- that that's why we called them for a
7 hearing.

8 Q Okay. Ms. Kersey, did you send an Order and Notice
9 of Hearing to Mr. -- I'm sorry, Mr. Le?

10 A We did, uh-huh.

11 Q And what date?

12 A August 26.

13 Q Did he sign for it?

14 A He did, August 28.

15 Q Okay. And that Notice of Hearing, did it tell him
16 to appear today, September 15 at 9 a.m, at Room 801 in
17 the Freeway Medical Building?

18 A Yes, ma'am, it did.

19 Q And did it tell him what all of the violations that
20 he was being brought to hearing on were?

21 A It did.

22 Q Okay. Ms. Kersey, Mr. Nicklaus testified about
23 training on the trashcan?

24 A Uh-huh.

25 Q Sufficient number of waste receptacles. In your

1 experience -- how long have you been with the Cosmetology
2 Section?

3 A Four and a half years.

4 Q As the Section Chief that entire time?

5 A Yes.

6 Q Okay. Have you ever interpreted this sufficient
7 number of covered waste receptacles to mean anything
8 other than all trashcans have to be covered?

9 A No, ma'am.

10 Q Okay. So -- and have we brought people for that
11 violation before?

12 A Yes, multiple times.

13 MS. PITMAN: Thank you. No other
14 questions.

15 HEARING OFFICER: Mr. Nguyen, do you have
16 any questions for Ms. Kersey?

17 MR. WILLIAMS: Yes.

18 CROSS-EXAMINATION

19 BY MR. WILLIAMS:

20 Q You know, on the -- on the issue of the trashcans,
21 you know, if the rule is that all trashcans have to be
22 covered, why doesn't it say in the rules that all
23 trashcans have to be covered? You know, it's just a
24 little ambiguous, I think. You know, if we see
25 sufficient, you know, what's sufficient to him might be

1 considerably different to what's sufficient to you and,
2 you know, it doesn't say all, it says sufficient?

3 A I mean if it -- I -- I didn't make the rule either
4 so, I mean, that's just how we interpret it. Because,
5 like, if it's one trashcan that's covered, is that
6 sufficient to you? I mean, how do you determine that?
7 So we have a hard time determining that, so all in the
8 working area need to be covered.

9 Q What do you think the point was when they made a
10 rule that says the trashcan has to be covered?

11 A I have no idea. I -- I did not make it, I mean
12 these rules have been in place for years.

13 Q Do you think it could be to keep down odor?

14 A Possibly.

15 Q And, you know, I -- I suspect that's what it is.
16 And -- and if that is the reason that they initially made
17 this, you know, used pedicure slippers and used toe
18 separators, I don't suspect, puts off a whole lot of odor
19 so I don't -- you know, I think if you went into most
20 nail salons --

21 MS. PITMAN: Objection. He's not asking a
22 question.

23 MR. WILLIAMS: Sorry.

24 HEARING OFFICER: That's okay. Yeah,
25 try -- try not to --

1 MR. WILLIAMS: All right. Yeah.

2 HEARING OFFICER: You will get a chance to
3 testify in a minute, but let's -- any other
4 specific questions for this witness?

5 MR. WILLIAMS: All right. No. So I guess
6 that's it.

7 HEARING OFFICER: Any questions from the
8 board for this witness?

9 MS. ANDERSON: Yes. I have a question.
10 Trish Anderson. You --

11 THE WITNESS: For me, it's just me.

12 MS. ANDERSON: Oh, it's for Kelli.

13 How long has Mr. Le owned the salon, in
14 your knowledge?

15 THE WITNESS: February, since February.

16 MS. ANDERSON: This February?

17 THE WITNESS: He became the owner in
18 February.

19 MS. ANDERSON: February of '14?

20 THE WITNESS: Uh-huh. Uh-huh.

21 MS. ANDERSON: Thank you.

22 HEARING OFFICER: Any other questions from
23 the board?

24 Go ahead.

25 MS. FORD: When you did the change of --

1 change of owner, you -- the business name
2 remained the same?

3 THE WITNESS: Correct.

4 MS. FORD: Okay.

5 HEARING OFFICER: Any other questions from
6 the witness or from either party or the board?

7 All right. Let's call your next witness.

8 MS. PITMAN: No other witnesses.

9 HEARING OFFICER: Department rests?

10 MS. PITMAN: Uh-huh.

11 HEARING OFFICER: All right. So now it's
12 your turn to present your side of the case,
13 Mr. Le. I understand -- and I've already --
14 I'm so sorry, I so bad with names. What was
15 your name again, sir?

16 MR. WILLIAMS: Mine is Mike Williams and
17 his is Le Nguyen.

18 HEARING OFFICER: Okay. Either one of
19 you, if you're testifying as a witness for
20 Mr. Nguyen or you're going -- or you can call
21 Mr. Nguyen and have -- and have him be a
22 witness, or it's -- like I said, it's informal.

23 MR. WILLIAMS: Okay.

24 HEARING OFFICER: So it's -- so go right
25 ahead.

1 MR. WILLIAMS: Okay.

2 HEARING OFFICER: Whichever one of you
3 wants to go first.

4 MR. WILLIAMS: All right. Well, Le, why
5 don't we just do the same thing, let's just
6 start with No. 1.

7 WHEREUPON,

8 LE NGUYEN,

9 having been called for examination, and having been first
10 duly sworn by the Hearing Officer, was examined and
11 testified, as follows:

12 DIRECT EXAMINATION

13 BY MR. WILLIAMS:

14 Q Can you explain to us what that person that they
15 saw -- the inspector saw leaving the shop, what -- what
16 was she doing?

17 A Yeah, this is lady they -- they don't do -- they
18 don't do -- they don't do nail. That's my wife friend,
19 that's from Vietnam, they come maybe three months, they
20 babysit at my home, at my house, they babysit, they watch
21 my child. And that day, that busy day, I tell you, them,
22 her and her -- her husband go over to my shop and help
23 me. Her husband, he is a manicure person, and he help me
24 reception, and she help me clean. And when the -- he --
25 he come, she -- sometime she -- her and her husband, they

1 go to clean everything we want done, and my wife do the
2 pedicure, done pedicure, and she go in and clean. And
3 the one lady they go, the time she -- he come, the lady,
4 the girl, she come and she want a polish change, just a
5 polish change. And so her husband give her on the chair,
6 pedicure chair, ready for polish chair, and she some
7 time, she -- she don't do nails. She's just helping me
8 remove some polish, that's what she do, that what she do,
9 remove polish, that's it. And he come and he seen that
10 she remove polish, she doesn't do the nail. And she run
11 when he -- when he come, and we don't know why she run.
12 After that, her husband tell me, husband don't know, that
13 time husband don't know too, but at -- later on, he go to
14 looking for her and while -- ask her why she run, and she
15 ask -- I don't -- I don't bring green card. That's what
16 she said. She don't have green card, that's why she run.
17 Q Okay. So what about the salon license, did you --
18 did you not post it because you didn't have it?
19 A The -- before I -- before I keep the -- the -- I
20 just take care of VA Nails the pedicure, right. Yeah.
21 And he come -- the first time he come, the VA Nails
22 license still on there, and I go to renew this, but I
23 still get the keep the VA Nails license on the property.
24 But the lady, the owner lady, she come there and she take
25 it. She take it, because that in her name and she take

1 it. And I don't know, that -- I don't know how I -- I
2 can look, and why didn't my license come and I brought it
3 too but I don't -- I don't -- I just keep this. And when
4 he come and he told me don't have, I don't see the VA
5 Nails, and I looking for this, and I go to the state
6 board, and that's how state board, state board send me
7 another one.

8 Q So -- so you -- you had applied for, you just
9 didn't -- didn't have it in your possession? So you had
10 applied for your salon license?

11 A Yeah. That's --

12 Q So that's what that is; is that right?

13 A Yeah, that's it, and I put in my drawer.

14 Q Okay. So you had paid for it, you had applied for
15 it, you just didn't have it in your fingers; right?

16 A That, I don't know about that. I just keep that.

17 Q When did you get it?

18 A I go to state board and I got it there.

19 Q And did they give you your license then?

20 A No, that's it.

21 Q So what about right now, do you have a salon license
22 posted?

23 A Yeah, I have -- yes, I have it. They send me July
24 21st, that's when I get my -- let me see what day they
25 send.

1 HEARING OFFICER: And let's take a quick
2 interject real quick. Since we're going to
3 admit that into evidence, let's pass that
4 around to the board so they can look at it.

5 MR. WILLIAMS: Oh, sure.

6 THE WITNESS: Yeah.

7 HEARING OFFICER: Can we make a quick
8 copy? Do you want to go off the record for a
9 minute and make a copy or should we do that at
10 a break?

11 MS. PITMAN: It doesn't matter.

12 MS. KERSEY: We don't have to go off the
13 record, we have people that can do that.

14 HEARING OFFICER: Okay. Let's pass it
15 around and then we'll make a copy.

16 COURT REPORTER: Mr. Le, could you spell
17 your last name.

18 THE WITNESS: What?

19 COURT REPORTER: Last name spelled?

20 THE WITNESS: Nguyen, N-g-u-y-e-n.

21 COURT REPORTER: Thank you.

22 MS. FORD: Mr. Hearing Officer, if I may,
23 while that's going around, I've checked the
24 address and this is not the establishment that
25 I know them from. For the record, this is

1 not --

2 HEARING OFFICER: Oh.

3 MS. FORD: For the record, this is not --
4 I have not been in this establishment, once I
5 checked the address.

6 HEARING OFFICER: All right. Well, as --
7 well, as the board is looking at that, just
8 respondent, go ahead and -- and get out the
9 rest of your questions, if you want.

10 MR. WILLIAMS: Okay. Sure.

11 BY MR. WILLIAMS:

12 Q Le, have you ever been in other nail salons?

13 A Yeah. I have.

14 Q Have you been in, would you say, a lot of nail
15 salons?

16 A Yeah.

17 Q In all the nail salons that you've been in, how
18 often have you seen a basket setting next to their drying
19 table for the pedicure slippers? Do you see that a lot?

20 A Yeah, no. That -- that's in -- we've had -- way --
21 I don't -- I really don't know that, I really don't that.
22 Some I would think is uncomfortable, I did not see about
23 that. I didn't see. They wasn't comfortable for them,
24 easy put in there, and people blowing and separator and
25 easy put up, and then after full, we take it -- we take

1 off and we threw -- and, you know, some people do
2 manicure, very easy mess them up, I -- I don't -- we --
3 all we do, easy to put on. You know, when we right in
4 the -- the -- the check in, we put in the under chair --
5 under -- under the table, that table dry, that drying
6 table, that table, we put them, the check on there. When
7 they ready come, they stuck the lead and flip flop and
8 separator on the chair. I don't want to open something
9 that easy mess them up, and that's what.

10 Q So later at the end of the day what do you do with
11 those shoes, those flip flops?

12 A Huh?

13 Q I said, what do you -- what do you do with the
14 slippers and toe separators at the end of the day?

15 A After that we threw -- we put in the trashcan and we
16 throw --

17 Q Throw --

18 A -- away. We have a big trashcan, trashcan in the
19 back, big back.

20 Q Okay. You know, to this -- I guess you've --
21 you've -- have you read this complaint against you from
22 this man?

23 A I just read that. This guy -- this guy --

24 Q So you did read it?

25 A Like I said, I get call about this guy?

1 Q Well, so you read this; right?

2 A Yeah.

3 Q And -- and -- and did he claim a woman worked on his
4 feet or a man worked on his feet?

5 A I -- I work on his feet.

6 Q So he claimed a man worked on his feet; right?

7 A Yeah.

8 Q And that's what it says here?

9 A Yeah.

10 Q And then, the person that the inspector saw run out
11 of the shop, that was a man or a woman?

12 A A woman.

13 Q So that person could not possibly have been this
14 person; right?

15 A No. No. No. She don't do -- she never come there,
16 that's first time that she come.

17 Q Because, I mean, in this complaint, it doesn't
18 specifically say you, it just says a man. So you were
19 the guy? You worked on this man?

20 A Yeah. Me and my wife, that's it. Yeah.

21 Q Okay. Okay. Did this man who was in your shop that
22 day, the guy who made the complaint, did he tell you why
23 he was in the area?

24 A Yeah. He -- he go to the doctor, the doctor close
25 by my shop, and once he come -- when he come, he said

1 that he go to doctor early, he want to go there my shop
2 and do pedicure and I say yes. But I go you want to do
3 now, and she said -- he say he could wait, he could wait.
4 And a lot of other people he come, he go, he watch TV, he
5 watch shop. And he go to -- he go to my shop, which I
6 asked, with had one -- which are with you, he say, he
7 tell me red car. He have red car. And he have stick in
8 his -- a stick on the, you know, in his hand and go do
9 pedicure. And I -- I say, at her -- at him, are you
10 okay, he say I'm okay. And when we set up for him do
11 pedicure, the, he -- his feet very bad. His feet are
12 bad.

13 Q So -- so when he came in your shop he was using a
14 cane?

15 A Yes, a cane. Yes, a cane.

16 Q And he told you he was using a cane because he had
17 been in a car accident; right?

18 A Car accident, yes.

19 Q And what you call a doctor isn't really a doctor;
20 right?

21 A It's a --

22 Q He's not a doctor, he's a chiropractor; right?

23 A I don't know what he do -- what type doctor, but --

24 Q I know -- I know where your place is --

25 A Yeah.

1 Q -- and the guy is -- it's not a doctor, it's a
2 chiropractor clinic?

3 A Yeah.

4 Q And that guy was going in there because he got in a
5 car accident, or so he told you?

6 A Yeah. Yeah.

7 Q All right. Do you remember, when you worked on this
8 man's feet, did -- did he ever indicate to you that
9 something hurt?

10 A He got -- he fit -- he saw me -- he lost marked out,
11 red mark, and they know why, when he shop in the water
12 long time, it look like terrible, but he warn me, he want
13 us to remove all the thing, we never say no. We leave a
14 little bit it outside, the toe very dense, very terrible.
15 And we -- we on -- when we do for him, and we done
16 nothing yet, but on the time he go to the doctor. And
17 his wife done but he not done yet and he told me he will
18 right back, he will come back after he have doctor
19 appointment. And I'm -- he not come back.

20 And -- and during the -- the next day, he called me,
21 and he told me, he said an attorney, an attorney -- he
22 tell me he an attorney, and he -- he want me -- he expect
23 me to return for -- from -- for his wife money, and I say
24 what happened? He's told me, he is an attorney and he
25 say, he say, who his place, this happen, so now, and so

1 now he told me that.

2 Q So he told you that he was an attorney, is that
3 right?

4 A He attorney, he want us to return his money. And
5 that's, he said that, and that's all. And that's when I
6 say, what happened, and they say, what happened, if you
7 look, certify you come here, and I looking for and you
8 say if you not satisfied I return your money, but I want
9 to see your first part and he say no. So 70-dollar.
10 That the -- that him the 25-dollar and his wife and
11 all -- he want to take all the money for her for him, and
12 I say no. And say -- and he -- he scare me, he talk, I
13 say -- he say, had take about two hour, I don't care -- I
14 don't want to you go to your shop, it takes two hour, you
15 pay me two hour to go there, and I say no. And after
16 that, I don't know why he take up -- hung up the phone.

17 Q So -- so he -- he calls you the next day and,
18 basically, he wanted his money back?

19 A Yes. And I said no, and he just -- I tell you
20 can -- I think you come here and --

21 Q And then when you told him no, what did -- what did
22 he say?

23 A He say he don't know -- and he will -- he told me
24 that he will call state board and he complain and we --
25 you -- I want to you close the shop, he told me.

1 Q But -- but when you did the pedicure, you don't
2 remember, you know, cutting his feet?

3 A No. Not -- no, no.

4 Q So when you first looked at his feet, before you
5 ever touched them --

6 A Yeah.

7 Q Explain more, you said they were bad?

8 A Yeah.

9 Q So what was wrong with his feet?

10 A His feet, I see that he have wreck car and maybe
11 that he don't -- he don't do nothing on --

12 MS. PITMAN: I kind of want a relevance
13 objection, just simply on the basis that we're
14 not -- we haven't made any violations based on
15 the complaint received at all, that was just
16 simply the reason that Mr. Nicklaus went out to
17 the salon on July 2nd .

18 HEARING OFFICER: I'll sustain that. I
19 think you've made a good record on that, on
20 that gentleman, but let's -- let's move it
21 along.

22 MR. WILLIAMS: Okay.

23 HEARING OFFICER: So if there is -- there
24 are no violations talking about this case, so
25 let's -- so let's move on.

1 MR. WILLIAMS: Okay. So that's all we
2 had.

3 HEARING OFFICER: Very good. Any
4 cross-examination?

5 MS. PITMAN: Just a couple of questions.

6 CROSS-EXAMINATION

7 BY MS. PITMAN:

8 Q Mr. Nguyen; right?

9 A Yeah.

10 Q I'm sorry I called you Mr. Le earlier. I have a
11 hard time reading other people's handwriting sometimes.

12 You stated, I believe, when Mr. Williams was
13 questioning you earlier, that the lady who was at the
14 pedicure bowl that ran out, she was there to polish or
15 remove polish?

16 A Just remove polish.

17 Q Just remove polish?

18 A Yeah. Just -- she just remove polish, that was it.

19 Q That's all?

20 A yeah. That's --

21 Q So she was there to actually remove polish from
22 customers? Is that what you said?

23 A Yeah.

24 Q Okay. I just wanted to clarify and make sure I
25 understood that.

1 And then, Mr. Nguyen, my only other question is, you
2 own VA Nails; right?

3 A Yes, I do now.

4 Q And what day did you take ownership?

5 A About 18 in February. Right.

6 Q In February?

7 A Yeah. 18 February 2014.

8 Q Okay. And -- okay. On that receipt you showed, I
9 think it had a date on it, what date was on that receipt?

10 A What is it?

11 MR. WILLIAMS: Oh, it is --

12 THE WITNESS: Yeah, 18 February.

13 BY MS. PITMAN:

14 Q So you went in on the day that you took ownership of
15 that license?

16 A Yeah, yeah. That's right.

17 Q Okay. What day did you receive it?

18 A 21st July.

19 Q 21st of July?

20 A (Nodding head up and down.)

21 Q So it took five months for you to receive your
22 license?

23 A Yeah.

24 Q You testified somewhere in there that someone came
25 in and took a license. Tell me what that's about?

1 A What is that?

2 MR. WILLIAMS: I believe what he -- what
3 he said was that the old owner, the people he
4 bought the shop from, at some point, after he
5 took over the shop, she came by one day and she
6 took her license back.

7 THE WITNESS: Yeah.

8 MR. WILLIAMS: Because it had, I guess,
9 her name on it, so --

10 MS. PITMAN: Okay. First, can the record
11 reflect that Mr. Williams testified for
12 Mr. Nguyen?

13 HEARING OFFICER: Sure.

14 MS. PITMAN: Thank you.

15 HEARING OFFICER: Is that accurate what he
16 said?

17 MR. WILLIAMS: You said the old owner came
18 back by your shop --

19 THE WITNESS: Yeah. Yeah.

20 MR. WILLIAMS: -- and took the --

21 THE WITNESS: Yeah, that's right.

22 BY MS. PITMAN:

23 Q Okay. What day did that happen, about?

24 A See, after he -- she sold me her shop and she say,
25 welcome me, about two months -- two months -- two months.

1 Q About April?

2 A Uh-huh, two month, two month. That's probably about
3 May or month, and after that she -- she gone and she take
4 license and she gone.

5 Q Because if you look at Page 17 of the violations,
6 the old violations, it looks like they -- on 4/17 of this
7 year, sometime in April of this year, did you have an
8 inspection?

9 A Yes, we have it, they passed it, yeah. At that time
10 we still have a VA Nails on there.

11 Q And then you had a license; right?

12 A Yeah.

13 Q Okay. And so now you don't, so you're saying the
14 owner came and took it down?

15 A Yeah.

16 Q Did you ever attempt to go get a new license?

17 MR. WILLIAMS: (Indicating.)

18 BY MS. PITMAN:

19 Q That was on February?

20 A Yeah.

21 Q So after April, did you ever attempt to go get a new
22 license?

23 A Yeah.

24 Q After she came and took it down?

25 A Yeah. Yeah. And I don't -- I don't -- I -- she

1 don't call me, she take it off, I don't know -- I
2 don't -- I don't know that, you know. And when he
3 called, and that's when I know.

4 Q Okay.

5 MS. PITMAN: Okay. That's it, I think
6 that's all I have.

7 HEARING OFFICER: Any questions from the
8 board for the respondent?

9 MS. ANDERSON: I have a question at this
10 time, because the license is kind of vague to
11 me. You bought it 2/18, you applied for a
12 change of name to -- to -- you bought it in
13 February, you changed the name 2/18. So at
14 that time the license that was issued was the
15 license she took or you have a new license that
16 was issued in your name?

17 THE WITNESS: My name, but the VA Nails
18 license, and that still on -- on the wall, on
19 the wall.

20 MS. ANDERSON: So you do have a license
21 that's posted now --

22 THE WITNESS: (Nodding head up and down.)

23 MS. ANDERSON: -- that is the license you
24 applied for at 2/18 that we saw the receipt
25 for?

1 THE WITNESS: Yeah, yeah, I have it.

2 MS. ANDERSON: It just wasn't posted at
3 the time when our inspector came in? Is that
4 correct? Your license, the state board sent
5 you the new license?

6 THE WITNESS: The new license.

7 MS. ANDERSON: Was it posted -- it wasn't
8 posted when the inspector came in, but you had
9 that license, is that correct?

10 Because we see a receipt, 2/18, you
11 changed the name.

12 THE WITNESS: Yeah.

13 MS. ANDERSON: Where -- where was that
14 license? You received it 7/21?

15 THE WITNESS: 7/21.

16 MS. ANDERSON: So you posted it after that
17 time, so it's now posted in your salon?

18 THE WITNESS: Yeah. Yeah.

19 MS. ANDERSON: Okay. Thank you.

20 HEARING OFFICER: Any other questions from
21 the board?

22 MS. FORD: I do.

23 And on 2/18/2014 you went to the
24 Cosmetology Section office, filled out a name
25 change, change of ownership for your business;

1 correct?

2 THE WITNESS: Yes.

3 MS. FORD: Okay. At that time did they
4 mail you out a license?

5 THE WITNESS: No.

6 MS. FORD: Did they --

7 THE WITNESS: What --

8 MS. FORD: -- say they were going to mail
9 a license?

10 THE WITNESS: They mail one -- one
11 license, business license. I don't see the --
12 I don't know, VA Nails license. The -- and --

13 MS. FORD: VA Nails license?

14 THE WITNESS: No. No.

15 MS. FORD: Did the cosmetology office mail
16 you one?

17 THE WITNESS: They just mail me one
18 license, previous license.

19 MS. FORD: When -- when did you receive it
20 in your hands? When did you get it in the
21 mail?

22 THE WITNESS: The VA Nails license?

23 MS. FORD: Yes. The one you paid for.

24 THE WITNESS: The 21st -- the 21st,
25 after 21st of July.

1 MS. FORD: Of July. So from --

2 THE WITNESS: About the --

3 MS. FORD: -- February to July --

4 THE WITNESS: Yeah.

5 MS. FORD: -- you don't have a business
6 license?

7 THE WITNESS: Right. I don't.

8 MS. FORD: Did you call to say, where is
9 my license? As a business owner, did you call
10 the office?

11 THE WITNESS: I just I came, I came.

12 MS. FORD: You went up and checked?

13 THE WITNESS: Yeah. Yeah.

14 MS. FORD: And at that time, what was the
15 response?

16 THE WITNESS: I don't remember, but
17 when -- when he come, he come -- the first time
18 he come, we still have a VA Nails on the -- on
19 the well with the old owner, the second time he
20 come, we don't have it. And that reason why, I
21 don't know why I didn't get that when I go to
22 the state board and don't have it.

23 MR. TABB: I have a question. Did you
24 have a letter of authorization before you
25 received your license? Did they send you a --

1 THE WITNESS: No, no, when he come and
2 he -- he told me he check and he told me that,
3 and I -- I don't know where the VA Nails
4 license, I don't know VA Nails license.

5 MR. TABB: But you did not have a letter
6 stating that you could open?

7 THE WITNESS: No. No.

8 MR. TABB: Hmm.

9 HEARING OFFICER: Any further questions
10 from the board or from -- or from the state for
11 the respondent?

12 MS. SULLIVAN: I do. You took ownership
13 after the inspection on 4/17/14?

14 THE WITNESS: Yeah.

15 MS. SULLIVAN: The day after?

16 THE WITNESS: Yeah. Yeah. That --
17 it's -- yeah, on the 18th, on the 18th.

18 MS. SULLIVAN: Do what?

19 THE WITNESS: It's the holiday, I
20 remember, he call it's the holiday.

21 MS. SULLIVAN: Okay.

22 HEARING OFFICER: Any further questions
23 from the board?

24 MS. SULLIVAN: Oh, I -- never mind.

25 HEARING OFFICER: All right. Let's see,

1 Mr. Nguyen, anything else that you need to tell
2 the board at this time or any other witnesses
3 to call?

4 MR. WILLIAMS: You know, I guess it
5 wouldn't hurt to, you know, I think you guys
6 are aware but, you know, he's a new owner,
7 wouldn't hurt to mention that. He's a new
8 owner. You know, I think there is always
9 some -- some, you know, a learning curve when
10 you take over a place, when he took over this
11 place. I know he -- he did a lot of cleaning
12 up, trying to make it right. I think it's
13 going to -- you know, maybe took him a little
14 while to get there, I think it's better than it
15 was, and I know he tries.

16 HEARING OFFICER: Great. All right. So
17 we'll show the respondent rests. Let's see.
18 Any other questions for any witness, in
19 light of -- in light of these questions?

20 MS. FORD: I would like to cross-examine
21 Kelli Kersey or ask Kelli Kersey some
22 questions, please.

23 HEARING OFFICER: Go right ahead.

24 WHEREUPON,

25 KELLI KERSEY,

1 having been recalled for examination, and having been
2 first duly sworn by the Hearing Officer, was examined and
3 testified, as follows:

4 MS. FORD: Kelli Kersey, when a name --
5 name change or an owner change takes place,
6 what is the policy of the cosmetology section
7 as far as a new license or how -- how -- can
8 you walk us through that process, please?

9 THE WITNESS: Sure. A name -- an owner
10 change is \$75 and a name change is \$75, so this
11 particular one was only an owner change.
12 When -- once the money goes into our
13 licensing -- you know, we don't do our money
14 anymore, but once it goes into the licensing
15 office, a license is automatically generated.
16 So once his money went in with that receipt, a
17 license would have automatically have generated
18 and sent to him. But it wasn't -- it was just
19 an owner change, not a name change, so it was
20 the same name.

21 MS. FORD: Right. So a new license would
22 have been printed and mailed out?

23 THE WITNESS: Correct.

24 HEARING OFFICER: Any other questions from
25 the board or for any of the witnesses?

1 Go ahead.

2 MS. ANDERSON: Yes, I have a question for
3 Kelli as well.

4 So do we have acknowledgment that that
5 license was sent? Because I've had the same
6 thing happen to me at the school and had to
7 reask for the license because the license
8 didn't come due to the mail or whatever. Do we
9 know --

10 THE WITNESS: I mean, we can look back. I
11 didn't look back to see if it was, but --

12 MS. ANDERSON: Can we do that from here?
13 Do we -- can we do that at this time?

14 THE WITNESS: Well, I mean, I can have
15 them try.

16 MS. ANDERSON: Can they -- can they do a
17 trace on it before we make a decision?

18 THE WITNESS: I don't know if they can do
19 it that quick, because they will -- they will
20 have to go back quite a ways, because that was
21 April, so --

22 MS. ANDERSON: Yeah, okay.

23 THE WITNESS: -- I'm assuming in April in
24 that inspection he wasn't cited for not having
25 a license posted, so I'm assuming that he had

1 it in April, the new one.

2 MS. ANDERSON: Okay.

3 THE WITNESS: I mean, that's just an
4 assumption.

5 MS. ANDERSON: Unless he -- that's an
6 assumption, right. But -- but ours was several
7 months and we were -- we were able to get --
8 get a copy of that license.

9 THE WITNESS: Because he got it in
10 February.

11 MS. ANDERSON: And send it out.

12 THE WITNESS: Yeah.

13 MS. ANDERSON: All right. Thank you.

14 THE WITNESS: If he -- sorry.

15 MS. ANDERSON: Go ahead.

16 THE WITNESS: If he had a -- if he has a
17 license now and he has not paid for a
18 duplicate, I don't know if he has, we can ask
19 that question, then he's had it the whole time
20 because he would have had to pay for a
21 duplicate.

22 MS. ANDERSON: Can we ask that question,
23 can we see if he has a duplicate license
24 issued? Would that show up in the system?

25 THE WITNESS: We can look. They can look

1 that up real easily.

2 MS. ANDERSON: That would be good. That
3 would be good to know.

4 THE WITNESS: No, he does not have one.

5 MS. PECK: But this is just over the
6 license not being posted in the reception area?

7 MS. ANDERSON: Right.

8 HEARING OFFICER: Okay. Any other
9 questions from the board from either witness or
10 any of the witnesses, for that matter?

11 All right. Mr. Nguyen has given a closing
12 argument? Does the state want to give a
13 closing argument?

14 MS. PITMAN: Yes, please.

15 HEARING OFFICER: Go right ahead.

16 MS. PITMAN: Okay. First, regarding the
17 trashcan issue, it's a longstanding Arkansas
18 law that an agency is given discretion to
19 interpret its own laws, and their
20 interpretation of their own rules and regs is
21 given great deference by the courts and great
22 deference by any board that hears it.
23 Throughout history the cosmetology section,
24 being in the department at least for four and a
25 half years that Kelli -- Ms. Kersey has been

1 with us, we have interpreted that rule to say
2 that all trashcans must be covered and you must
3 have a sufficient number of them. We've
4 enforced it that way, we've given warnings to
5 several different establishments enforcing it
6 that way, and in the past year since I started
7 we've been actually enforcing that rule as
8 we've just -- as we've been interpreting it all
9 along; therefore, I don't feel like that's
10 really an argument here, the question is
11 whether or not they violated that rule. I
12 think the evidence speaks for itself on whether
13 or not they violated all of these rules.

14 I understand Mr. Nguyen is a new owner,
15 but it doesn't matter how new an owner you are,
16 you are held responsible for your establishment
17 following all of our rules and regulations for
18 providing a safe, clean place for people to
19 come and have their feet and their nails worked
20 on, and that's the point of our rules, they are
21 health and safety rules. The point of the
22 license being posted is a consumer information
23 rule. I -- I don't know what happened to the
24 license, I'm a little confused myself. He has
25 a receipt showing he should have gotten it in

1 February, there was a license posted in April,
2 he says that license was removed and there
3 wasn't one in July and he got the license three
4 weeks after, I -- we say that it should have
5 been mailed out, something was clearly on the
6 wall in April, something that our inspector
7 felt was a valid license was clearly on the
8 wall in April, it was gone in July. I can't
9 tell you any more than that, I -- I don't feel
10 like we really understand what happened. So --
11 and the pictures I think speak for themselves.
12 Again, we're not here on the complaint so I'm
13 not even addressing those, that's just simply
14 why we were there on July 2nd to begin with,
15 regardless of what happened to that gentleman,
16 why his feet looked this way. If you look at
17 the pictures from when Mr. Nicklaus was there,
18 the dirty instruments that are sitting out,
19 that appear like they're going to be used
20 again, I don't know that he saw anyone use them
21 again but they're not in a trashcan; we have a
22 trashcan full of slippers, so either this is an
23 uncovered trashcan or it's slippers that they
24 are going to put back on someone's feet, either
25 way it's a violation, they say it's a trashcan,

1 so we're taking that, taking that as what it
2 is, and it's an uncovered trashcan. I mean,
3 these pictures clearly show that they weren't
4 following the health and safety regulations.
5 That's it.

6 HEARING OFFICER: All right. Let's --
7 well, normally at this time I would declare the
8 record closed and let y'all go off the record
9 to deliberate. Is that what the board wants to
10 do now or -- or I took the chair woman would
11 want to run some kind of check or something
12 like that. Do I need to leave the record open
13 pursuant for that or are you guys ready to make
14 your decision?

15 MS. ANDERSON: I believe we did do the
16 check, we did find out that there was no
17 duplicate license.

18 HEARING OFFICER: Okay. Then at that time
19 let's declare the record be closed and complete
20 except for the board's recess and
21 deliberations, and y'all can go ahead and
22 deliberate. And thank you for addressing the
23 board.

24 (WHEREUPON, the Committee retired to
25 deliberate, off the record, from 11:17 a.m. to

1 11:22 a.m., and returned with the following
2 motion.)

3 HEARING OFFICER: All right. Let's go
4 back on the record, and I'll turn the hearing
5 over to the chair woman.

6 MS. ANDERSON: Okay. At this time we do
7 have a motion in the case of VA Nails, and I'm
8 going to turn that over to Ms. Kim Ford for her
9 motion, please.

10 MS. FORD: In The Matter of The Arkansas
11 Department of Health versus VA Nails, under the
12 enforcement of 5 -- 5.1 ruling, allowing a
13 person to work without an Arkansas license, we
14 find it to be valid and the fine -- the
15 proposed fine of \$250; in the matter versus
16 consumer information with the salon license not
17 being posted in the reception area, a 50-dollar
18 fine; and with the physical facilities of the
19 salon, maintaining equipment and have
20 sufficient number of covered waste receptacles,
21 a 50-dollar fine; and supplies and instruments
22 being disposed of immediately after use, a
23 50-dollar fine; and the use of all
24 implements -- all implements and instruments
25 being placed in labeled containers, a 50-dollar

1 fine; and liquids, creams, etc., stored and
2 labeled in clean -- clean, closed containers,
3 \$50, for a sum of 500.

4 MS. ANDERSON: Okay. And I have a second
5 the floor by Adrian Tabb?

6 MR. TABB: Uh-huh. I second.

7 MS. ANDERSON: Okay. And he seconds that.
8 And we'll call for the vote. Adrian, your
9 vote?

10 MR. TABB: Aye.

11 MS. PECK: Aye.

12 MS. FORD: Aye.

13 MS. SULLIVAN: Aye.

14 MS. ANDERSON: That's a unanimous vote.

15 HEARING OFFICER: Very good. Let the
16 record reflect, as the chair woman noted, the
17 decision is unanimous, it's going to be reduced
18 to writing and we'll serve -- and we'll make
19 service on all parties, including Mr. Nguyen.
20 And, Mr. Nguyen, if you want to appeal the
21 decision of the board, you can do that pursuant
22 to the Administrative Procedures Act, it's at
23 Arkansas Code Annotated 25-15-201.

24 If there are any other questions or
25 comments about this hearing is -- this

1 particular hearing is concluded and the record
2 is closed.

3 MS. PITMAN: Can I just clarify, we do
4 follow the Administrative Procedures Act. The
5 Cosmetology Act also requires appeal directly
6 to the Board of Health.

7 HEARING OFFICER: Oh, thank you for
8 clarifying that. I didn't know that.

9 MS. PITMAN: So -- that's actually part of
10 17-26, I believe, 101, et seq., and you have 30
11 days to appeal to the board.

12 MR. WILLIAMS: Okay. I think you're done.
13 Keep all this.

14 (WHEREUPON, at 11:25 a.m., the
15 above-entitled proceedings were concluded.)

16 ---o---

17 HEARING OFFICER: Okay. Ready to go on
18 the next -- on the next hearing? Let's see --

19 MS. ANDERSON: Or do we want to take a
20 break?

21 HEARING OFFICER: You want to take --
22 yeah, that will be fine, it's up to you guys.

23 (Discussion off the record.)
24
25

1 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
2 (CTAC)

3 IN THE MATTER OF:

4 ARKANSAS DEPARTMENT OF HEALTH PETITIONER

5 vs.

6 BEST NAILS RESPONDENT

7 ---o---

8 HEARING OFFICER: All right. Let's see.
9 The next one would be, in the matter of the
10 Arkansas Department of Health versus Best
11 Nails. Is Best Nails here?

12 MS. PREACHERS: No.

13 HEARING OFFICER: Best Nails not here. In
14 that case, let's have all the witnesses that
15 are going to testify raise your right hand
16 again and get sworn.

17 (WHEREUPON, the witnesses were sworn by
18 the Hearing Officer.)

19 HEARING OFFICER: Counsel for the state,
20 go ahead and proceed.

21 MS. PITMAN: Okay. Behind the tab marked
22 Best Nails, there is a 30-page packet that we
23 would move to admit.

24 HEARING OFFICER: It's admitted.

25 (WHEREUPON, DHS - Cosmetology Section

1 Exhibit No. 1, 30 pages, was received in
2 evidence.)

3 MS. PITMAN: And we would also take
4 official notice of the Rules and Regulations
5 for Cosmetology and the Cosmetology Act.

6 HEARING OFFICER: So noted.

7 MS. PITMAN: Okay. And I will call
8 Christopher Nicklaus.

9 HEARING OFFICER: You can inquire. Sorry.

10 WHEREUPON,

11 CHRISTOPHER NICKLAUS,
12 having been called for examination, and having been first
13 duly sworn by the Hearing Officer, was examined and
14 testified, as follows:

15 DIRECT EXAMINATION

16 BY MS. PITMAN:

17 Q State your name.

18 A Chris Nicklaus, Arkansas Department of Health,
19 Cosmetology Section, Cosmetology Inspector.

20 Q And, Mr. Nicklaus, you just told me where you were
21 employed so I won't ask you that again. Did you go out
22 and inspect Best Nails on 8/26/14?

23 A Yes.

24 Q And if you look at Page 8 and 9 of the hearing
25 packet, is that your inspection report?

1 A Yes.

2 Q What did you find on that day?

3 A Several things. This was actually a follow-up to
4 the last inspection that the board requested a 30-day
5 follow up.

6 Q Okay.

7 A Or the committee. Sorry.

8 Q So the last inspection resulted in a hearing?

9 A Yes.

10 Q Okay. And that was heard in July --

11 A Yes.

12 Q -- by this board?

13 A (Nodding head up and down.)

14 Q And this inspection was done as a follow up to that?

15 A Yes.

16 Q And what did you find that day?

17 A Floors, mats in clean, good repair; walls, woodwork,
18 material in clean and good repair; equipment,
19 furnishings, fixtures, clean and good repair; sufficient
20 number of waste receptacles -- covered waste receptacles;
21 sorry, all bottles and containers labeled as to content;
22 all supplies and instruments that can't be disinfected
23 are disposed of immediately after use; solutions covered
24 at all times; all used instruments placed in labeled
25 containers; disinfected instruments stored in clean

1 covered place; and separation of disinfected/contaminated
2 implements; pedi bowls disinfected prior to each use,
3 having foreign matter removed and disinfected with an
4 EPA-approved disinfectant.

5 Q All right. Mr. Nicklaus, how many of these were
6 repeat violations? Do you know?

7 A I'm sorry?

8 Q Do you know how many of these were repeat
9 violations?

10 A I think it was five or six that were repeat
11 violations.

12 Q Okay. You think, but you're not certain on that?

13 A I'm not certain how many were. Yes. Yes.

14 Q I think Ms. Kersey can testify to that,
15 Mr. Nicklaus.

16 Did you take pictures while you were out on the
17 inspection?

18 A Yes.

19 Q Okay. Starting on page -- I believe they start on
20 Page 12?

21 A Uh-huh.

22 Q Are these the pictures you took?

23 A Yes.

24 Q Will you please tell us what this first picture is?

25 A It's the flooring behind the pedicure bowls.

1 Q Okay. And what is this showing us?

2 A It looks like there was water standing at one time,
3 it's collected a lot of dirt and ick to it, and there is
4 also an extension cord.

5 Q Okay. And the violation is per Rule 8, which is
6 floors, mats --

7 A Yes.

8 Q -- etc., must be clean and repaired?

9 A Yes.

10 Q And so this is for the flooring being --

11 A Clean, yes.

12 Q Okay. Sorry, that wasn't a very good question, I
13 was trying to think. I think I'm getting hungry so my
14 brain is not working very well.

15 If you look at Page 14, we have Rule 8 again. What
16 is this showing us?

17 A These are -- this was a repeat from the last
18 inspection. The flooring in front of the water heater
19 has a huge chunk took out of it, and Picture 15 was where
20 the huge hole in the wall was, which they, looks like
21 they are trying to repair. That went back to Rule 8 as
22 well.

23 Q Okay. So Page 14 shows the floor and it was a
24 repeat, they still had this -- they had this problem from
25 a previous inspection?

1 A Yes.

2 Q Okay. And it shows huge chunks in the floor? I'm
3 just trying to summarize what you're saying.

4 A Yes.

5 Q And then on 15, was this a repeat from the previous
6 violation?

7 A It was a repeat, but like I've stated, they are --
8 they have gotten the hole, I mean the hole is fixed, but
9 it's not completely finished.

10 Q Okay. So it looks like they are trying to fix it?

11 A Correct.

12 Q Okay. Going on to Page 16, what is this showing us?

13 A Just the dirty wall --

14 Q Okay.

15 A -- behind the trashcan. This is in the restroom.

16 Q Okay. And this is in the restroom?

17 A Yes.

18 Q And we're looking at the dirty wall behind the
19 trashcan?

20 A Correct.

21 Q Okay. Page 17?

22 A This is a plastic bag at a nail station with used
23 implements, nail files and nail buffers in it.

24 Q Okay. Is this supposed to be a trashcan?

25 A I'm assuming it is, and that's wrote up -- what I

1 wrote it as.

2 Q Okay.

3 A As not having a covered trashcan.

4 Q Did you ask him about the plastic bags?

5 A Yes. They said that -- they stated that it was not
6 thrown away from the last inspection.

7 Q That it was not thrown away from the last
8 inspection?

9 A Uh-huh. Because I wrote -- I -- that was a repeat
10 from the last inspection.

11 Q Okay. So they are saying these nail things had just
12 been sitting there since the last inspection?

13 A Uh-huh.

14 Q Okay. Page 18, what is this showing us?

15 A Page 18 are their pedicure -- their pedi chairs.
16 The leather is completely off of it, they can't be
17 disinfected.

18 Q Okay. And that's a violation of Rule 8?

19 A Yes.

20 Q And that's the one about everything has to be
21 cleaned and disinfected and in good repair?

22 A And in good repair. Yes.

23 Q And Page 20?

24 A Oh, I'm sorry. It's another picture of the pedicure
25 chairs.

1 Q Okay. Page 21?

2 A 21 are their nailbrushes, not covered and labeled,
3 and their dirty nailbrushes -- or their clean nail --
4 sorry. The picture with the brushes and the disinfectant
5 are their clean nailbrushes, and the one laying on the
6 plate are their dirty nailbrushes.

7 Q Okay. So it says on here Rule 19 and Rule 22. Do
8 you know what -- what these are showing as violations of?

9 A All bottles and containers labeled as to content,
10 and 22, solutions covered at all times.

11 Q Okay. What's not labeled here?

12 A The one with the Barbicide, that should be their
13 dirty nail brush container, and the bowl or plate,
14 whichever that is, should be their clean one, and they
15 both should be covered and labeled.

16 Q Okay. Thank you.

17 Page 22, what are we looking at?

18 A Used nail block in a -- used nail block and nail
19 files in a drawer at a manicure station.

20 Q What is -- what rule does that violate?

21 A It is Rule 21, all supplies and instruments that
22 can't be disinfected or disposed of immediately after
23 use.

24 Q Page 23?

25 A Page 23, it's the same violation, and -- I'm sorry.

1 I'm trying to read.

2 Page 23 is Rule 21 and also Rule 22, separation of
3 disinfected and contaminated implements.

4 Q So there are clean and dirty instruments in this
5 drawer?

6 A Yes.

7 Q Page 24?

8 A Page 24 are a pair of used flip flops that were put
9 back in a pedicure station, with clean items, so --

10 Q This cotton sitting on top of the flip flop, is that
11 clean or dirty?

12 A The cotton was clean.

13 Q Okay. Thank you. And Page 25?

14 A Again, another used nail block.

15 Q And what should they have done with the used nail
16 block, according to our rules?

17 A Thrown it away.

18 Q Page 26?

19 A Another pair of used flip flops.

20 Q And where are these flip flops?

21 A They are also in a pedicure station.

22 Q So they're not in a trashcan, they are in a pedicure
23 station?

24 A Correct.

25 Q Okay. Page 27?

1 A Page 27 are their filters of their pedicure bowls.

2 Q Okay. What rule does that violate?

3 A That is Rule 22, pedi bowls prior to each use have
4 foreign matter removed and disinfected with an
5 EPA-approved disinfectant.

6 Q What's in these drains?

7 A It was grime. I don't know what else to say, it was
8 grime.

9 Q Grime?

10 A Dirty. It was dirty.

11 Q Okay. Page 28? Is this still the same drains?

12 A It was -- no. It was in a separate bowl.

13 Q Okay. So this is a different pedicure bowl?

14 A Yes.

15 Q Is it showing the same thing as Page 27?

16 A Correct.

17 Q Is Page 29 the same pedicure bowl or --

18 A Different one.

19 Q And Page 30?

20 A It was a different one as well.

21 Q And all of these pictures with the filters and
22 pedicure bowls, were they all grime or do you -- was
23 there anything else in any of these pedicure bowls?

24 A There was grime and the bath salts that they use and
25 I think there was string in some of them.

1 Q Mr. Nicklaus, is there anything else about your
2 inspection that you would like us to know today?

3 A (Shaking head from side to side.)

4 Q Did you leave a copy of the inspection report at
5 Best Nails?

6 A Yes.

7 Q Who signed for it?

8 A It was Helen, the last name there on the licensing.

9 Q Helen, it looks like she signed as Phunsi?

10 A Yes.

11 Q Okay. And did Ms. Phunsi, or Phunsi, I'm probably
12 pronouncing it incorrect, but did she have any comments
13 about the inspection that day?

14 A She said that the owner wasn't there and she made
15 the comment about the plastic bag, that they forgot to
16 throw it away from the last inspection.

17 MS. PITMAN: Okay. Thank you,
18 Mr. Nicklaus. I don't have any other
19 questions.

20 HEARING OFFICER: Before we take questions
21 from the board, why don't I get going and let
22 Ms. Kendra Akin Jones -- we'll go off the
23 record just briefly.

24 (WHEREUPON, a brief discussion was held
25 off the record.)

1 (Christian Harris left the proceedings and
2 Kendra Akin Jones is now the Hearing Officer.

3 HEARING OFFICER: Good morning.

4 MS. ANDERSON: Good morning.

5 HEARING OFFICER: I had to make a quick
6 shuffle, so commission's time to ask questions.
7 Anybody have any questions? If not.

8 MS. PITMAN: Call Ms. Kersey.

9 HEARING OFFICER: Go right ahead,
10 Ms. Kersey.

11 WHEREUPON,

12 KELLI KERSEY,
13 having been called for examination, and having been first
14 duly sworn by the Hearing Officer, was examined and
15 testified, as follows:

16 THE WITNESS: Kelli Kersey, Arkansas
17 Department of Health, Cosmetology Section,
18 Section Chief.

19 DIRECT EXAMINATION

20 BY MS. PITMAN:

21 Q Ms. Kersey, I believe Mr. Nicklaus testified that
22 this was an inspection that was ordered by the CTAC at
23 the last meeting?

24 A Correct.

25 Q What were the violations that were repeated from the

1 previous hearing?

2 A I'm sorry that that is omitted, we meant to put the
3 findings of fact in here, but I do have that information.
4 The floors and mats were not in clean good repair; the
5 equipment was not clean in good repair; sufficient number
6 of trashcans; all disinfected that can't be disinfected
7 has to be disposed of immediately; solution has to be
8 covered at all times; and the separation of
9 disinfected/contaminated instruments, so there were six
10 that were repeat.

11 Q And if you look at Page 10 and 11 of the hearing
12 packet, is this the hearing print off that shows the
13 previous violations?

14 A It is.

15 Q Was Mr. Nguyen -- I believe, was the owner, is that
16 correct?

17 A Yes.

18 Q Was he notified of today's hearing?

19 A Yes, he was.

20 Q Okay. And is the Order and Notice of Hearing on the
21 first page?

22 A It is, Page 1, 2, and 3, I believe, and 4.

23 Q What date -- what day did we mail that?

24 A August 27.

25 Q And what day did he sign for it?

1 A Looks like the 28th, August 28.

2 Q Do you know why Mr. Nguyen is not here today? Has
3 he contacted -- contacted you?

4 A I do not.

5 Q And the Notice of Hearing tells him to be here today
6 at 9 a.m. in Room 801 of this building?

7 A Correct.

8 Q And it lists out all of the violations?

9 A Yes.

10 Q Ms. Kersey, did anyone contact you regarding this
11 inspection that Mr. Nicklaus conducted from Best Nails?

12 A I have not spoken to anyone. Huh-uh.

13 Q Okay. Is there anything else you would like the
14 Technical Advisory Committee to consider today?

15 A No.

16 MS. PITMAN: Nothing further.

17 HEARING OFFICER: Okay. Committee
18 members, any questions for Ms. Kersey?

19 MS. ANDERSON: Yes, I have a question.

20 HEARING OFFICER: All right, Ms. Anderson.

21 MS. ANDERSON: Would you refresh us on the
22 finding that we made, on the last hearing so
23 we're current on that?

24 THE WITNESS: Yeah. Do y'all want me to
25 have Teri print that?

1 MS. ANDERSON: That would be good.

2 MS. PREACHERS: It's in the packet. I
3 mean it's like --

4 THE WITNESS: The findings of fact is?

5 MS. PREACHERS: Yeah, it's No. 13, on Page
6 2.

7 MS. ANDERSON: Okay.

8 THE WITNESS: Oh, I'm sorry. Yes.

9 MS. ANDERSON: Okay. Thank you.

10 THE WITNESS: Right here. It's from Page
11 1 to Page 2, it tells us what -- No. 2 to 13 on
12 Page 2. Thank you.

13 HEARING OFFICER: Anybody have any other
14 questions?

15 MS. ANDERSON: Do we have any questions?

16 I think we're ready for -- to go off the
17 record.

18 HEARING OFFICER: Okay. Very well then.
19 At this time we'll go off the record -- or do
20 you want to say anything in closing?

21 MS. PITMAN: I think I forgot to ask
22 Ms. Kersey what the proposed penalty was and I
23 would like to cover that.

24 HEARING OFFICER: Go right ahead.

25 BY MS. PITMAN:

1 Q Tell us that.

2 A For this time it was \$300.

3 Q And is there a spreadsheet that explains that on
4 Page 6 and 7?

5 A Correct.

6 MS. PITMAN: I have no other questions.

7 HEARING OFFICER: Very well. If there is
8 no closing at this time, we'll go off the
9 record for deliberations. Once the board
10 reaches a decision, we will go back on the
11 record.

12 MS. PECK: Have they paid their --

13 MS. ANDERSON: It is in our paid
14 violations.

15 HEARING OFFICER: Okay. With that
16 question are we good? Okay. We're off the
17 record. Go right ahead.

18 (WHEREUPON, the Committee retired to
19 deliberate, off the record, from 11:43 a.m. to
20 11:49 a.m., and returned with the following
21 motion.)

22 HEARING OFFICER: Very well. At this time
23 we'll go back on the record for the board's
24 decision.

25 MS. ANDERSON: Okay. At this time, Wendy

1 Sullivan is going to make a motion.

2 MS. SULLIVAN: In The Matter of Arkansas
3 Department of Health versus Best Nails, I make
4 a motion for suspension until the fines are
5 paid in full, and immediate -- pending
6 immediate reinspection before reopening, and
7 the fines, a total of \$300 for equipment,
8 furnishing fixtures, clean and repair, 50
9 dollars, sufficient number of covered waste
10 receptacles \$50, all bottles and containers
11 labeled as to content \$50, disinfected or
12 disposed of immediately after use, \$50,
13 disinfected instruments stored and clean
14 covered place \$50 and disinfected with
15 EPA-approved disinfectant \$50, for a total of
16 300.

17 MS. ANDERSON: Okay. And do I hear a
18 second to that?

19 MS. FORD: I second that.

20 MS. ANDERSON: Okay. I have a motion and
21 a second, second by Kim Ford. Adrian?

22 MR. TABB: Aye.

23 MS. PECK: Aye.

24 MS. FORD: Aye.

25 MS. SULLIVAN: Aye.

1 MS. ANDERSON: And the motion is passed
2 unanimously.

3 HEARING OFFICER: Very well. Let the
4 record reflect the board's decision is
5 unanimous, please, reduce the board's decision
6 and make or attempt service upon all parties.
7 Also notify any of the parties that they may
8 take an appeal of the decision if they so want
9 to under the Arkansas Administrative Procedures
10 Act, found at 25-15-201 et seq., or any
11 specific provision of this board.

12 If there is no further questions or
13 comments for this hearing, the record is
14 closed.

15 (WHEREUPON, at 11:51 a.m., the
16 above-entitled proceedings were concluded.)

17 ---o---

18 (WHEREUPON, a lunch break was held at this
19 time.)
20
21
22
23
24
25

1 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
2 (CTAC)

3 IN THE MATTER OF:

4 ARKANSAS DEPARTMENT OF HEALTH PETITIONER

5 v.

6 ENVY NAILS RESPONDENT

7 ---o---

8 HEARING OFFICER: Envy Nails. Is anybody
9 here for Envy Nails?

10 MR. DAO: Yes.

11 HEARING OFFICER: Okay. If you will, have
12 a seat down here at the end of the table and
13 we're going to get started.

14 COURT REPORTER: Sir, what's your name?

15 MR. DAO: Dao, D-a-o. And H-a-i.

16 COURT REPORTER: H-a-i?

17 MR. DAO: Yes, ma'am.

18 COURT REPORTER: Thank you, sir.

19 HEARING OFFICER: Okay. My name is Kendra
20 Akin Jones, and I'm the Hearing Officer today
21 In The Matter of the Arkansas Department of
22 Health versus Envy Nails, to be heard before
23 the Cosmetology Technical Advisory Committee.
24 Today is Monday, September 15, 2014.

25 Would the respondent please identify

1 yourself for the record? Would the -- now,
2 what did you say your name was, sir?

3 MR. DAO: Hai Dao.

4 HEARING OFFICER: Mr. Dao?

5 MR. DAO: Yes, ma'am.

6 HEARING OFFICER: Very good. And you
7 received a copy of today's Order and Notice of
8 Hearing?

9 MR. DAO: Yes, ma'am.

10 HEARING OFFICER: Okay. And you don't
11 have counsel here with you today?

12 MR. DAO: No, ma'am.

13 HEARING OFFICER: Okay. Board's counsel,
14 please, identify yourself for the record.

15 MS. PITMAN: Elizabeth Pitman, Deputy
16 General Counsel for the Arkansas Department of
17 Health.

18 HEARING OFFICER: Okay. For the benefit
19 of those present today who may not have
20 appeared before in an administrative hearing,
21 the board will base its decision solely on
22 evidence that is presented here today, so if
23 you have anything in your possession that you
24 want the board to consider when deliberating on
25 your case, you need to be sure and introduce it

1 so they can have -- have it to look at. The
2 strict rules of evidence do not apply, since
3 this is being held under the Administrative
4 Procedures Act, so we will grant objections
5 only if necessary to keep things moving along
6 and to make sure that the board has all the
7 information that they need.

8 The participants should be aware that this
9 hearing is open to the public under the Freedom
10 of Information Act, and that does include the
11 board's recess for deliberations.

12 For those of you who are going to be
13 witnesses in today's matter, if you would
14 please raise your right hand to be sworn in.

15 (WHEREUPON, the witnesses were sworn by
16 the Hearing Officer.)

17 HEARING OFFICER: Very well, Ms. Pitman,
18 any preliminary matters?

19 MS. PITMAN: Yes. There is a packet
20 behind the tab marked Envy Nails that is 41
21 pages. We would ask that that be admitted.

22 HEARING OFFICER: Mr. Dao, have you seen
23 the documents in this packet that the board is
24 wanting to introduce, the 41 pages?

25 MS. PITMAN: Yes.

1 MR. DAO: Yeah. I have it right here.

2 HEARING OFFICER: Okay. You have a copy
3 of that. Okay. Very well. Do you have any
4 objections to any of that?

5 MR. DAO: Because I didn't -- I am a busy
6 man, I didn't bring in my business about two
7 years. So my wife, she took over, she do what
8 she do with it. So I've got nothing, know
9 about this right here.

10 HEARING OFFICER: Okay. I'm going to
11 introduce that as Board's Exhibit No. 1.

12 (WHEREUPON, DHS - Cosmetology Section
13 Exhibit No. 1, 41 pages, was received in
14 evidence.)

15 HEARING OFFICER: Anything else,
16 Ms. Pitman?

17 MS. PITMAN: I would just ask that we take
18 official notice of the Rules and Regulations of
19 the Cosmetology and the Cosmetology Act.

20 HEARING OFFICER: That will be so noted.

21 MS. PITMAN: Okay. Mr. Dao, you said you
22 didn't have anything with you today?

23 MR. DAO: No, ma'am.

24 HEARING OFFICER: Any paperwork or
25 anything?

1 MR. DAO: Oh, yeah, I got the letter. I
2 got the letter.

3 HEARING OFFICER: You got the letter, but
4 is there anything that you have with you that
5 you want the board to consider today?

6 MR. DAO: No, ma'am.

7 HEARING OFFICER: Okay. Very well.

8 Ms. Pitman, anything else preliminary?

9 MS. PITMAN: No, ma'am.

10 HEARING OFFICER: At this time I'm going
11 to let each of you make an opening statement.
12 Ms. Pitman, you can go first.

13 MS. PITMAN: I don't really have one.

14 HEARING OFFICER: Okay. Mr. Dao, is there
15 anything you would like to tell the board in an
16 opening before we get started, and then
17 Ms. Pitman will call her witnesses, and I'll
18 give you ample opportunity to -- to explain the
19 board -- or to explain to the board your --
20 your position and -- and let them ask you
21 questions as well.

22 MR. DAO: No.

23 HEARING OFFICER: Okay. Ms. Pitman, you
24 can call your first witness.

25 MS. PITMAN: Call Christopher Nicklaus.

1 WHEREUPON,

2 CHRISTOPHER NICKLAUS,

3 having been called for examination, and having been first
4 duly sworn by the Hearing Officer, was examined and
5 testified, as follows:

6 THE WITNESS: Chris Nicklaus, Arkansas
7 Department of Health, Cosmetology Section,
8 Cosmetology Inspector.

9 DIRECT EXAMINATION

10 BY MS. PITMAN:

11 Q And, Mr. Nicklaus, did you do an inspection of Envy
12 Nails?

13 A Yes.

14 Q What day?

15 A July 30, '14.

16 Q July 30, 2014?

17 A Yes.

18 Q And was this in response to a complaint or was it a
19 routine inspection?

20 A It was in response to a complaint.

21 Q And that complaint appears to be on Page 12 --

22 A Yes.

23 Q -- and 13; is that correct?

24 A Yes.

25 Q What was the complaint?

1 A The complaint was -- the complaint was from a
2 customer stating that she was injured during a procedure
3 of nail removal at the nail salon.

4 Q Okay. And there are pictures accompanying that?

5 A Yes.

6 Q Mr. Nicklaus, did you do anything to verify these
7 pictures?

8 A Did I do anything to verify them?

9 Q Uh-huh.

10 A No.

11 Q Okay. Did you just use this complaint as the basis
12 for your investigation?

13 A Yes.

14 Q Okay. And can we prove any of the allegations in
15 the complaint?

16 A I'm sorry, I'm reading it real fast.

17 Q No. That's fine. Can I rephrase that for you,
18 Mr. Nicklaus?

19 A Sure.

20 Q Is the reason we're here today based on your
21 investigation only, or is there any other reason based on
22 this complaint?

23 A The investigation on the complaint.

24 Q Okay. So looking at your inspection report sheet,
25 can you tell us what you found on July 30, 2014?

1 A Yes. I found an unlicensed person, allowing a
2 person to work without an Arkansas license; I requested
3 photo ID from four people and only received one; the
4 restroom being used for storage; floors and mats in clean
5 and good repair; sufficient number of covered waste
6 receptacles; all bottles and containers labeled as to
7 content; all supplies and instruments that can't be
8 disinfected disposed of immediately; solutions covered at
9 all times; used instruments placed in labeled containers;
10 separation of disinfected/contaminated implements; and
11 liquids and creams, etc., stored in labeled and clean,
12 closed containers.

13 Q Okay. Mr. Nicklaus, you also have some notes on
14 Page 9?

15 A Uh-huh.

16 Q Photo ID was asked of all the people?

17 A Yes. The owner was the only one to present one, and
18 the other three left the building.

19 Q Did they come back?

20 A No.

21 Q Okay. Did they have practitioner's licenses?

22 A There was only three practitioner license that were
23 posted.

24 Q When you walked into the salon, you said there were
25 four people, three left. So there were four people

1 working? Were they all working?

2 A There was only one person working.

3 Q Okay. Who was that?

4 A He doesn't have a license.

5 Q Do you remember who it was?

6 A It was an older Vietnamese gentleman.

7 Q What was he doing when you saw him?

8 A A set of sculptured nails.

9 Q A set of sculptured nails? For the benefit of me,
10 what is that? I'm sure they know, but I don't know.

11 A He was either doing a set of sculptured nails or gel
12 nails, I'm not sure what he was doing, but he was
13 applying nails to this lady when I walked in the
14 building.

15 Q Okay. So was it like a fake or a --

16 A Right.

17 Q -- artificial nail?

18 A Yes.

19 Q And he was putting it on her hand?

20 A Yes.

21 Q What do you have to use to do that?

22 A Sculpture gel, gel, nail tips.

23 Q Do you use an adhesive of any kind?

24 A Yes.

25 Q Can you do damage with an adhesive if it's not used

1 properly?

2 A Yes.

3 Q Did you take pictures while you were at Envy Nails?

4 A Yes.

5 Q And those look to be on page -- there's quite a
6 few -- 22, is that where we start?

7 A I'm sorry?

8 Q Are they -- do they start on Page 22?

9 A Yes.

10 Q And just like we've done in previous hearings, can
11 you kind of walk us through what we're looking at?

12 A Sure. Picture on Page 22 falls under Rule No. 3,
13 toilet facilities available, not used for storage.

14 Q So this is their public restroom?

15 A Yes.

16 Q Okay. And what are -- what is this document here?

17 A There is a roll about and a ladder and some kind of
18 shelving.

19 Q And what items were being stored?

20 A The roll about and the ladder, and I'm assuming the
21 shelving, since they are not using it any longer.

22 Q Okay. And the next picture?

23 A The next picture is their flooring right behind the
24 manicure area, that's Rule No. 8, floors and mat in clean
25 and good repair.

1 Q What is this on the floor?

2 A You have nail tips, pens, nail clippings, Dremel
3 bits or the files for the Dremel bits and bugs.

4 Q Okay. The next picture?

5 A It's in the same area behind the manicure stations.

6 Q And what are we looking at?

7 A There are nail tips on the floor, bugs, nail
8 clippings.

9 Q And the next picture?

10 A Another -- a basket with used flip flops and toe
11 separators and other trash in it.

12 Q It looks like you cited them here for Rule 13a,
13 which is the not -- the insufficient number of covered
14 trashcans?

15 A Correct.

16 Q So this was a trashcan?

17 A Yes.

18 Q Is there also a trashcan next to it?

19 A Yes.

20 Q Okay. So they claim both of these are trashcans?

21 A Yes.

22 Q Okay. The next picture?

23 A It's a plastic bag at a nail station with used nail
24 files and buffers in it and other trash.

25 Q And this was also a trashcan?

1 A Yes.

2 Q Did they say this was a trashcan?

3 A Yes.

4 Q And when I say they, who were you speaking with?

5 A I was speaking with the owner, Kim.

6 Q And that's the gentleman here today?

7 A He wasn't there.

8 Q He wasn't there?

9 A No.

10 Q His wife?

11 A Yes.

12 Q And I think he talked about her earlier?

13 A Yes.

14 MR. DAO: Yeah.

15 MS. PITMAN: Is that right?

16 MR. DAO: Yes, ma'am.

17 BY MS. PITMAN:

18 Q Page -- or Picture 6, Page 27, what is this showing?

19 A It's another -- it's a -- I'm sorry, it's a

20 Barbicide jar with a nail brush in it.

21 Q That's Barbicide in that drawer -- jar?

22 A Yes.

23 Q Okay. And what -- what rule does this violate?

24 A Rule 19, all bottles and containers labeled as to
25 content.

1 Q Okay. Picture 7, Page 28?

2 A I'm sorry. Back to Picture 27, Rule 19, it also is
3 solution covered at all times, Rule 22.

4 Q So that's Rule 19 and Rule 22?

5 A Yes.

6 Q And so is -- Page 28, what is this showing us?

7 A Page 28 is nailbrushes, and there looks to be
8 something else in it, I can't recall what that is, but
9 it's not covered or labeled.

10 Q Is the lid sitting right next to it?

11 A Yes.

12 Q And Page 29?

13 A Page 29 is a drawer at a nail station. It has used
14 Dremel bits in it. I think that was -- oh, it looks like
15 there is a used nail file in there as well.

16 Q And what else is in this drawer with the used
17 Dremel -- Dremel bits and I think you said a nail file?

18 A I'm sorry?

19 Q What else is in this drawer with that?

20 A They have -- they -- if I -- if I remember right,
21 some of the items in that drawer were clean and some of
22 them were not.

23 Q Are these -- what are these nails? Are these going
24 to go on customers?

25 A Yes.

1 Q Okay. Page 30?

2 A Page 30 was a cubby hole at a nail station with used
3 nail files in it and nail -- a nail block.

4 Q So all of the nail files in this picture were used?

5 A Yes.

6 Q Page 31?

7 A Page 31 is a pedicure drawer at a pedicure station,
8 with used flip flops in it and opened packages of note --
9 I'm sorry, open packages of toe separators.

10 Q Were they also used?

11 A I can't recall if those had been used or not.

12 Q But the shoes had?

13 A Yes.

14 Q And what rule does this violate?

15 A Rule No. 21.

16 Q Which is?

17 A All supplies and instruments that can't be
18 disinfected are disposed of immediately after use.

19 Q Okay. Picture 32?

20 A We have another pedicure drawer or pedicure station
21 with a drawer with used flip flops and nail separators or
22 toe separators.

23 Q So it's the same issue we're seeing in this picture?

24 A Correct.

25 Q Page 33?

1 A I can't recall if this was a nail station or -- I'm
2 sorry -- a manicure station or pedicure station, but it
3 was used nail blocks and files in the station.

4 Q And what rule does that violate?

5 A Rule 21 and 12 -- it goes to Rule 21, all supplies
6 and instruments that cannot be disinfected are disposed
7 of immediately after use, and it says Rule 12 on the
8 picture but I don't think that's right.

9 Q Right. I think it is supposed to be Picture 12,
10 because the one before it is Picture 11?

11 A Oh, okay.

12 Q I think it's just a typo, but I don't know what
13 Rule 12 is, but I think --

14 A And that picture also goes with separation of
15 disinfected/contaminated implements as well as the flip
16 flops and the other nail files and buffers that were in
17 drawers.

18 Q Okay. Page 34?

19 A Page 34, was a pedicure station, if I recall, with
20 another used nail block and file.

21 Q Okay. Page 35?

22 A Page 35 is their wax pot with a stick hanging over
23 it that's been used.

24 Q And what rule does that violate?

25 A 21, all supplies and instruments that can't be

1 disinfected are disposed of immediately after their use.

2 Q And Page 36?

3 A Page 36 was a used file and block again. I can't
4 recall if that was in a station or on a station.

5 Q And should they have been thrown away?

6 A Correct.

7 Q Page 37?

8 A Another pedi station with used flip flops in it.

9 Q Page 38?

10 A Page 38 is a manicure station, if I recall, with
11 used nail files and blocks again, and nail dust was
12 everywhere and a used bit on a Dremel.

13 Q There is a used bit in here?

14 A I'm sorry?

15 Q There is a used bit here?

16 A Yes. It's on the Dremel.

17 Q Oh, okay. I see it.

18 On Page 39?

19 A Page 39 was a nail station. Everything in this
20 station was covered in nail dust.

21 Q So what rule does this violate?

22 A 22, before used on client nonelectrical instruments
23 are disinfected.

24 Q Okay. And these weren't disinfected because of the
25 nail dust?

1 A Correct.

2 Q Page 40?

3 A Pain 40 was a bag of Dremel bits at a nail station,
4 they weren't covered or closed.

5 Q So these have not been used yet?

6 A Correct.

7 Q Page 41?

8 A Page 41 was behind a manicure station, there is
9 Q-tips and orange wood sticks that were not covered.

10 Q And, again, those have not yet been used on a
11 client?

12 A Correct.

13 Q Mr. Nicklaus, did you leave the inspection report
14 sheet with someone at Envy Nails that day?

15 A Yes. I left it with Kim, the owner that day.

16 Q And did she sign off on it?

17 A Yes.

18 Q Did Ms. -- did Kim have anything to say about any of
19 these violations?

20 A I don't recall.

21 Q And you have quite a few notes here, Mr. Nicklaus,
22 and I think they go through the violations. Is there
23 anything in these notes that we have not yet talked
24 about?

25 A Health and safety rules were not posted, I don't

1 know if I wrote them for that or not, I may have talked
2 to her about that. No, I didn't write it. Excuse me.

3 Q And that was in the reception area, they did not
4 have the health and safety rules posted?

5 A Correct.

6 Q Anything else, Mr. Nicklaus?

7 A That was it.

8 Q Did you go back out to Envy Nails after July 30?

9 A No.

10 Q And have you had any other dealings with Mr. Dao
11 here or his wife since then?

12 A No.

13 Q Any other person at the salon?

14 A No.

15 MS. PITMAN: No other questions.

16 HEARING OFFICER: Okay. Mr. Dao, do you
17 have any questions for Mr. Nicklaus, anything
18 you would like to ask him?

19 MR. DAO: No.

20 HEARING OFFICER: Okay.

21 MR. DAO: No, ma'am.

22 HEARING OFFICER: Board members, questions
23 for Mr. Nicklaus?

24 If there are none, thank you very much.

25 Ms. Pitman, you can call your next

1 witness.

2 MS. PITMAN: Call Kelli Kersey.

3 HEARING OFFICER: Go right ahead.

4 WHEREUPON,

5 KELLI KERSEY,

6 having been called for examination, and having been first
7 duly sworn by the Hearing Officer, was examined and
8 testified, as follows:

9 THE WITNESS: Kelli Kersey, Arkansas
10 Department of Health, Cosmetology Section,
11 Section Chief.

12 DIRECT EXAMINATION

13 BY MS. PITMAN:

14 Q Ms. Kersey, you're aware of the complaint that was
15 received on Envy Nails?

16 A Yes.

17 Q And you were aware of Mr. Nicklaus's inspection on
18 July 30th?

19 A Yes.

20 Q What did you do after you received his inspection
21 report?

22 A We sent a -- we did not send a violation letter
23 because this was a repeat offender, so we sent a Notice
24 of Hearing.

25 Q Notice of Hearing, which I believe is the first page

1 of the packet?

2 A Correct.

3 Q What day was it sent?

4 A August 26.

5 Q And what day was it signed for?

6 A August 28.

7 Q And it looks like it was Ms. Kim --

8 A Uh-huh.

9 Q And --

10 MS. PITMAN: Sorry. Is it Ms. Dao also?

11 Is that your wife's name?

12 MR. DAO: Kim Hoang.

13 MS. PITMAN: Hoang?

14 MR. DAO: Yeah.

15 BY MS. PITMAN:

16 Q She signed for it?

17 A Yes.

18 Q And the Order and Notice of Hearing, does it tell
19 them to appear today on September 15 at 9 a.m., at 801
20 Freeway Medical Building?

21 A Yes.

22 Q And does it also list out the violations that
23 Mr. Nicklaus has described?

24 A Yes.

25 Q Ms. Kersey, you said that they did not receive the

1 violation letter because they had past violations?

2 A Correct.

3 Q I think those start on Page 19. Can you please walk
4 us through those?

5 A Okay. On 6/24 -- I mean 5 -- I'm sorry, 5/29/2013
6 it looks like they got two violations that were paid on
7 7/18. On Page 20, violation was paid in full, first one
8 was -- I'm sorry, was a payment, I guess, and the second
9 one was paid in full. 2000 and -- on Page 21, on
10 2/26/2013, the violations, that would have been from
11 11/13/2012.

12 Q Okay.

13 A Paid in full.

14 Q In November of 2012, they received two violations
15 for what?

16 A Equipment, furnishing, fixtures clean and good
17 repair, and all bottles and containers labeled as to
18 contents.

19 Q And which of those violations is a repeat for today?

20 A Both of them, I believe. Or maybe just one. Sorry.
21 All bottles and containers.

22 Q And both of those violations were paid in full on
23 February 26?

24 A Correct.

25 Q And they did not contest either one of those

1 violations?

2 A No.

3 Q And then on May 29, it looks like there were two
4 more violations?

5 A Uh-huh.

6 Q What were they?

7 A Sufficient airtight containers for sanitized
8 instruments and all supplies and instruments that cannot
9 be disinfected are disposed of immediately after use.

10 Q And, again, which of those is a repeat?

11 A Twenty-one, all supplies and instruments cannot be
12 disinfected.

13 Q Okay. And then it looks like they paid a hundred
14 dollars and then \$300 once on 7/22 and once on 7/18?

15 A Uh-huh.

16 Q And that has now been paid, well, a year ago, it
17 looks like?

18 A Yeah.

19 Q And that has now been paid in full?

20 A Correct.

21 Q And did they contest those violations?

22 A No.

23 Q Okay. Ms. Kersey, have you talked to Mr. Dao or his
24 wife since he -- we sent out this Order and Notice of
25 Hearing?

1 A I have not.

2 Q And so you don't know what they are contesting about
3 to those violations?

4 A No, we just brought them, I don't know if they are
5 contesting or not.

6 Q Okay. And, Ms. Kersey, I believe we talked about
7 this today but I want to make it clear, do we offer our
8 health and safety rules our rules and regulations for
9 cosmetology in other languages other than English?

10 A Yes.

11 Q What other languages?

12 A Spanish and Vietnamese.

13 Q Okay. So even if you can't read English --

14 A Correct.

15 Q -- you get a copy of these that you can read?

16 A In our rules -- our rules and regulations and our
17 statutes both.

18 Q Okay. Is there anything else about today's or about
19 this inspection that Mr. Nicklaus conducted or about Envy
20 Nails that you would like the cosmetology board to
21 consider today?

22 A No. At this time.

23 MS. PITMAN: No other questions.

24 HEARING OFFICER: Very well. Mr. Dao,

25 would you like to ask Ms. Kersey any questions?

1 MR. DAO: No, ma'am.

2 HEARING OFFICER: Okay. Board members,
3 questions for Ms. Kersey?

4 MS. FORD: Yes.

5 HEARING OFFICER: Go right ahead.

6 MS. FORD: Ms. Kersey, you also stated
7 that the rules and regulations are in English,
8 Spanish, and Vietnamese. What language is the
9 test for everybody that has a test in the state
10 of Arkansas, what language is the test issued
11 in?

12 THE WITNESS: English, Spanish,
13 Vietnamese, and Korean. Yes.

14 MS. FORD: The exam is?

15 THE WITNESS: Yes. That's the only four
16 languages it's offered in, because we have all
17 four languages.

18 MS. FORD: Okay.

19 MS. PECK: Do you know if any of them are
20 cosmetologists or --

21 THE WITNESS: I don't know that.

22 MS. PECK: Or just --

23 THE WITNESS: I can -- I can find that out
24 if --

25 MS. PECK: It bothers me that they are

1 waxing.

2 THE WITNESS: Yeah. I don't know.

3 HEARING OFFICER: Other questions from the
4 board for Ms. Kersey?

5 If there are none, then, thank you very
6 much Ms. Kersey.

7 Ms. Pitman?

8 MS. PITMAN: No other witnesses.

9 HEARING OFFICER: Okay. Mr. Dao, I'm
10 going to give you a chance to tell the board
11 anything you want them to hear and consider
12 before making their decision, and then I'll
13 give Ms. Pitman and the board members as well
14 an opportunity to ask you any questions. Okay.
15 Is there anything you would like to state?

16 MR. DAO: No.

17 HEARING OFFICER: There is nothing you
18 want to tell the board before they make a
19 decision?

20 WHEREUPON,

21 HAI DAO,

22 having been called for examination, and having been first
23 duly sworn by the Hearing Officer, was examined and
24 testified, as follows:

25 DIRECT TESTIMONY

1 MR. DAO: Actually -- actually I do -- I
2 do nothing in a year, and I was sick, I didn't
3 do nothing for a while, and so my wife she took
4 over and that's so long, I don't even know
5 about this. So I did get a letter, that's why,
6 I end up losing my -- last night I end up
7 driving about seven hour to come in to see what
8 going on, and that's it.

9 HEARING OFFICER: Okay. Ms. Pitman, do
10 you have any questions -- is that all you want
11 to say right now?

12 THE WITNESS: Yeah.

13 HEARING OFFICER: Ms. Pitman, any
14 questions for Mr. Dao?

15 CROSS-EXAMINATION

16 BY MS. PITMAN:

17 Q Mr. Dao, do you own Envy Salon -- or Envy Nails?

18 A Yes, about 12 1/2 years.

19 Q 12 1/2 years?

20 A Yes, ma'am.

21 Q And does your wife co-own it with you or is she just
22 running it for you?

23 A Actually, my wife, she -- she got -- she got four
24 kids, she really busy, you know, I didn't been over there
25 like over two years, you know, so --

1 Q And so if your wife is not able to be there, does
2 somebody else run the business for you?

3 A No, she -- she busy, but she work over there, work
4 with my sister-in-law over there.

5 MS. PITMAN: Okay. I don't have any more
6 questions.

7 HEARING OFFICER: Board members, questions
8 for Mr. Dao?

9 If there are none, Ms. Pitman -- Mr. Dao,
10 I don't guess you have any witnesses today? I
11 didn't ask but --

12 MR. DAO: No.

13 HEARING OFFICER: Okay. Ms. Pitman,
14 anything in closing?

15 MS. PITMAN: No.

16 HEARING OFFICER: Mr. Dao, anything before
17 the board recesses for deliberation?

18 MR. DAO: No, ma'am.

19 HEARING OFFICER: Okay. Then at this time
20 we'll close the record for the board's recess
21 for deliberations, and once the board reaches a
22 decision we'll go back on the record for that
23 decision.

24 Thank you very much. Ms. Trish, it's
25 yours.

1 (WHEREUPON, the Committee retired to
2 deliberate, off the record, from 12:54 p.m. to
3 1:01 p.m., and returned with the following
4 motion.)

5 HEARING OFFICER: Okay. At this time
6 we'll go back on the record for the board's
7 decision.

8 MS. ANDERSON: At this time we have a
9 recommendation by Wendy Sullivan.

10 MS. SULLIVAN: In The Matter of Arkansas
11 Department of Health versus Envy Nails, we make
12 a motion that all violations should be paid of
13 \$600, which is allowing a person to work
14 without an Arkansas license for \$250, health
15 and safety rules posted in reception area, 50,
16 the toilet facilities not used as storage is
17 50, floor mats and -- floors, mats in clean
18 repair, 50, sufficient number of covered waste
19 receptacles 50, all bottles and containers
20 labeled as to contents 50, disinfect or dispose
21 of implement immediately after use, 50, and
22 separation of disinfected/contaminated
23 implements 50, a total of \$600. We also want a
24 reinspection in 30 days, and if the matters are
25 not corrected at that time and they come before

1 the board, then there will be a -- a suspension
2 will be ordered.

3 HEARING OFFICER: Okay.

4 MS. ANDERSON: And I have a second on
5 that?

6 MR. TABB: I second it.

7 MS. FORD: I second it.

8 MS. ANDERSON: Okay. I have two seconds.
9 All right. So that second has been made.
10 Adrian, would you like to vote, please?

11 MR. TABB: Aye.

12 MS. PECK: Aye.

13 MS. FORD: Aye.

14 MS. SULLIVAN: Aye.

15 MS. ANDERSON: The motion passes
16 unanimously.

17 HEARING OFFICER: Very well. Let the
18 record reflect the decision of the board is
19 unanimous, please, reduce the decision to
20 writing, and make or attempt service upon all
21 parties, notifying the respondent of an appeal
22 that may be taken under the Administrative
23 Procedures Act or any specific provisions of
24 the Department of Health.

25 If there are no other questions or

1 concerns, then we'll close this record. Thank
2 you very much.

3 (WHEREUPON, at 1:03 p.m., the
4 above-entitled proceedings were concluded.)

5 ---o---

6 HEARING OFFICER: The next one up is going
7 to be Creations Hair Salon.

8 MS. KERSEY: She called Thursday and we're
9 putting it off until November.

10 HEARING OFFICER: Okay. Works for me.
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1 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
2 (CTAC)

3 IN THE MATTER OF:

4 ARKANSAS DEPARTMENT OF HEALTH PETITIONER

5 v.

6 TRINIA'S DIAMOND HAIR CARE RESPONDENT
7 Owner, Trinia Surratt

8 ---o---

9 HEARING OFFICER: So the next one up is
10 going to be Trinia's Diamond Hair Care.

11 MS. ANDERSON: She's smiling.

12 MS. SURRATT: Oh, hello.

13 HEARING OFFICER: And now, Trinia, your
14 last name is Surratt?

15 MS. SURRATT: Yes, Surratt.

16 HEARING OFFICER: Okay. I just wanted to
17 make sure I got that right.

18 MS. ANDERSON: Surratt?

19 MS. SURRATT: Yes, Surratt.

20 HEARING OFFICER: Surratt, okay. That's
21 the reason I like to ask before we get started.
22 Okay. Everybody is ready.

23 My name is Kendra Akin Jones and I'm the
24 Hearing Officer today for the matter of the
25 Arkansas Department of Health versus Trinia's

1 Diamond Hair Care, to be heard before the
2 Cosmetology Technical Advisory Committee.
3 Today is Monday, September 15, 2014. Will the
4 respondent please identify yourself for the
5 record?

6 MS. SURRATT: Trinia Surratt.

7 HEARING OFFICER: Trinia?

8 MS. SURRATT: Uh-huh.

9 HEARING OFFICER: Okay. See, I'm -- I'm
10 messing everybody up today.

11 And you don't have counsel with you -- you
12 here today, Ms. Surratt?

13 MS. SURRATT: No.

14 HEARING OFFICER: Okay. And you received
15 a copy of the Order and Notice of Hearing for
16 today's matter?

17 MS. SURRATT: Yes, ma'am.

18 HEARING OFFICER: And you're ready to
19 proceed?

20 MS. SURRATT: Yes.

21 HEARING OFFICER: Okay. Ms. Pitman,
22 please, identify yourself for the record.

23 MS. PITMAN: I'm Elizabeth Pitman, Deputy
24 General Counsel for the Department of Health.

25 HEARING OFFICER: Thank you. For the

1 benefit of anyone present who may have not
2 appeared in an administrative hearing, the
3 board will base its decision solely on the
4 evidence presented here today, so if there is
5 anything that you have in your possession that
6 you want the board to consider, we need to
7 introduce that into evidence and get them
8 copies of that today.

9 This hearing is being held under the
10 Administrative Procedures Act, so the strict
11 rules of evidence are applied less strict than
12 they would be in the normal court of law, so
13 there will be latitude allowed in introducing
14 the evidence, to promote a fair hearing and
15 provide the board with adequate information.
16 All participants should be aware that these
17 proceedings are subject to the Freedom of
18 Information Act, and as such all parts of the
19 hearing, including deliberations of the board,
20 are open to the public.

21 For those of you who are going to be
22 witnesses in this matter, if you would, please,
23 raise your right hand to be sworn in.

24 (WHEREUPON, the witnesses were sworn by
25 the Hearing Officer.)

1 HEARING OFFICER: Very well. Okay.

2 Preliminary matters, Ms. Pitman?

3 MS. PITMAN: There is a packet, is this
4 it?

5 MS. KERSEY: Uh-huh.

6 MS. PITMAN: Yes, with 43 pages in it
7 behind the tab labeled for Trinia's Diamond
8 Hair Care. We would ask that that be admitted
9 into evidence.

10 HEARING OFFICER: Ms. Surratt, have you
11 seen this packet of information?

12 MS. SURRATT: Yes.

13 HEARING OFFICER: And do you have any
14 objections to any of it?

15 MS. SURRATT: Yeah. I have, of course --
16 I have maybe about two questions.

17 HEARING OFFICER: Go right ahead.

18 MS. SURRATT: Okay. Well, first, if I
19 may, I would like to apologize for my absence
20 in the last hearing. I don't know if I just
21 had a strike of bad luck or whatever, but I did
22 submit, because I know that there was another
23 ruling the -- the last meeting, and I sent over
24 a promise to appear --

25 HEARING OFFICER: Okay. Ms. Surratt, I'm

1 not -- I'm going to give you plenty of chance
2 to tell everybody, but do you have any -- any
3 problems with the board having this
4 information?

5 MS. SURRATT: Well, no, the question that
6 I have is, I -- I know that the bulk of the
7 charges that I'm being charged are rooting back
8 from 2008, rooting back from 2008. I do
9 acknowledge that I have three violations
10 pertaining to my license, the last one being it
11 had just expired like two weeks before. But
12 I -- I do acknowledge that I have three
13 violations, but it's about 700 or so charge --
14 dollars, maybe \$775 in charges that -- that are
15 not directly reflected from violations, and I
16 was wondering what -- what were those assessed
17 for.

18 HEARING OFFICER: Okay. Well, let's --
19 let's do this.

20 MS. SURRATT: Okay.

21 HEARING OFFICER: Because I think that
22 gets more into the hearing than -- than just
23 preliminary stuff right now. All I'm looking
24 for right now is just to get some exhibits
25 introduced, and if there is anything you have

1 with you that you want the board to consider so
2 we can get introduced and let the board take a
3 look at it.

4 MS. SURRATT: Well, no. It's all in the
5 file.

6 HEARING OFFICER: Okay.

7 MS. SURRATT: Yeah.

8 HEARING OFFICER: Well, then, let's
9 introduce this as Board's Exhibit No. 1.

10 (WHEREUPON, DHS - Cosmetology Section
11 Exhibit No. 1, 43 pages, was received in
12 evidence.)

13 HEARING OFFICER: And then, Ms. Pitman, is
14 there anything -- other preliminary matters,
15 you want to address?

16 MS. PITMAN: Take notice of the Rules and
17 Regulations of the Cosmetology and Cosmetology
18 Act.

19 HEARING OFFICER: Okay, those will be so
20 noted. And Ms. Surratt, you said you didn't
21 have anything with you that the board needed to
22 have?

23 MS. SURRATT: No. Nothing outside of the
24 packet, yeah.

25 HEARING OFFICER: Okay. Very well. I'm

1 going to give Ms. Pitman and yourself an
2 opportunity to make an opening statement to the
3 board, and then we'll move on to allow some
4 questions and witnesses and that.

5 MS. SURRATT: Okay.

6 HEARING OFFICER: Ms. Pitman, go right
7 ahead.

8 MS. PITMAN: I think I'll make a brief
9 opening, just to kind of clarify some of this
10 stuff.

11 We had this hearing last time, and
12 Ms. Surratt wasn't able to be here, she asked
13 us to rehear it so she could be present and
14 we're here again today. We are asking for the
15 proposed penalty that is located on Page 16 of
16 \$400 regarding the violations from the
17 inspection conducted by Ms. Smith on May 9,
18 2014. The remaining violations, penalties, and
19 things of that nature are in here, like they
20 are for most of our hearings, so that the board
21 can consider past violations when deciding what
22 to -- to enforce penalty-wise today. That's my
23 opening.

24 HEARING OFFICER: Okay. Ms. Surratt,
25 anything you want to tell the board in opening,

1 go right ahead.

2 MS. SURRATT: Is this the questioning
3 phase or just anything I have to say phase?

4 HEARING OFFICER: This is just kind of an
5 opening --

6 MS. SURRATT: Okay.

7 HEARING OFFICER: -- of what you -- what
8 you think and you want to tell the board and
9 then I will let Ms. Pitman call her witnesses
10 and then if you have any.

11 MS. SURRATT: Okay.

12 HEARING OFFICER: And then the board will
13 have an opportunity to ask you questions and
14 everything you want to say.

15 MS. SURRATT: Okay. Well, pertaining to
16 this most recent one, it is a violation to my
17 license being expired, it had expired two weeks
18 prior to that visit. It is the -- the third
19 one over the course of some years that I've
20 gotten for an expired license. One of the
21 violations was not it had been expired, it just
22 wasn't posted. The floor mat, for whatever
23 it's worth, I've never been cited for anything
24 pertaining to health and safety in my salon, I
25 do run a very clean establishment.

1 On the day for the Rule 5, the physical
2 facility -- the floor of the salon, it was the
3 end of a Friday, I want to say, and I had just
4 got done cutting hair, doing hair. I believe
5 that as my last client left, Ms. -- my
6 inspector came in, so the floor cleanliness had
7 to do with there was a pile of hair that was on
8 the floor that I had just finished up, it was
9 on a weekend day.

10 I believe that the bulk of my 42-page file
11 has to do with a huge lack of being able to
12 communicate with the department. If I may, my
13 salon is located in a building where there are
14 four businesses in there. The -- there is a
15 certain person or rapport with the mail
16 carrier. It's a -- it's a daycare in that
17 building, it's a barbershop, it's a -- it was a
18 Dollar Store, and as well as my salon, so a lot
19 of times when the mail is delivered, especially
20 if it's certified, sometime, and -- and it's
21 shown in here, which is not -- on one of them,
22 usually they all went back, either not signed
23 or one of them someone else signed, so it's not
24 always that I get the mail.

25 The -- my -- the change of address didn't

1 get over to you guys or it wasn't put into the
2 computer until the end of last year. Most of
3 these fines go back before any notices that
4 I've actually received. So I have not, as far
5 as I -- I see it's a payment plan that was put
6 in place back in July. I never received that
7 payment plan. When I got my first
8 acknowledgment of any fines that I were
9 assessed, I think it was Ms. Pat that was my
10 inspector, I immediately came in, it was on
11 April the 27th. On April the 28th I was at
12 the state board office, which it shows in here,
13 and I -- I went to reinstate my license. When
14 I got there to -- to pay to bring them current,
15 it was the next day after I was made aware of a
16 fine; when I came, I was told that I had to
17 sign this paper here saying that I agree, but
18 at the same time I had to put in a -- it was
19 this paper, I had to put in a -- maybe not a
20 complaint, but just a -- something written out
21 saying that I didn't know where those charges
22 came from, which are the 700-and-something I'm
23 asking about now, because they are not
24 reflected in violations. And I was told that,
25 and I agreed that I wanted to do a payment

1 plan, but that was only -- I had to do that in
2 order to bring my license current. I wouldn't
3 have been able to get my license to operate
4 unless I -- I signed this waiver. The waiver
5 agreed to a payment plan.

6 Then we go back to the mail thing, I never
7 received anything in the mail that made it to
8 me about a payment plan. So therefore my first
9 hearing of anything pertaining to this payment
10 plan, again, came recently, and that's because
11 it was sent to my new address, which is my home
12 address that wasn't registered with you guys
13 until -- until the end of last year. So I'm
14 just really getting correspondences to any of
15 this at my new address. And immediately when I
16 received it, I called over to the office and it
17 brings us here.

18 I had every -- it's -- so my -- even with
19 the -- the payment plan, it's not a blatant
20 disregard of me saying, no, I'm not going to
21 pay it, because I definitely don't have a
22 problem with getting myself within the right
23 standings pertaining to it, but it's just I had
24 no communication of any of these charges.

25 I do acknowledge that I've had three

1 violations. One being it not -- it wasn't
2 expired, it was just not posted. So -- and
3 when I calculated those three violations, it
4 was like 700-and-something, roughly, that
5 wasn't in there. So I don't know exactly
6 where -- what -- well, when I spoke with, I
7 think, Ms. Kelli.

8 MS. KERSEY: Uh-huh.

9 MS. SURRATT: It came from -- I was being
10 charged per day over a certain period of time.
11 And I know that in that period of time between
12 finishing, I -- it's a small salon, I'm the
13 only one in there, there has never been any
14 other operator in there but me, so the only way
15 you'll catch me in there is if I'm there. Is
16 no one ever there, it's a very small one. So I
17 know during that time that the extra charges
18 were charged, I was an undergrad as well as
19 pursuing a masters, so a lot of it I -- I've
20 never just been stationary in the salon.

21 So I know that my new address wasn't
22 registered until the end of last year, so I'm
23 just getting in communication with receiving
24 anything. I think I've had one -- one that
25 came to me that I signed for, but it -- it was

1 not to the extent of this. And I did come the
2 very next day of being made aware that I was
3 being fined for something, I came up here. And
4 then when I got my first one in the mail at my
5 home, I called the very next day.

6 So I just assure you that it's not me just
7 having a total disregard, you know, and I do
8 believe that it may be a small portion of just
9 ignorant to the procedural guidelines for
10 getting a violation, you know, whether to know
11 to -- if I didn't receive anything, and I know
12 that it's marked on the sheet, to maybe call
13 and see, are you guys going to charge me
14 something and when I have to pay it. But as
15 far as the paperwork, I've never received
16 anything until recently.

17 HEARING OFFICER: Okay. Thank you, Ms.
18 Surratt.

19 Ms. Pitman, you can call your first
20 witness.

21 MS. PITMAN: Call Ms. Surratt.

22 MS. SURRATT: Okay.

23 WHEREUPON,

24 TRINIA SURRATT,
25 having been called for examination, and having been first

1 duly sworn by the Hearing Officer, was examined and
2 testified, as follows:

3 DIRECT EXAMINATION

4 BY MS. PITMAN:

5 Q Okay. I want to go through this paperwork real
6 quick.

7 A Okay.

8 Q That's what I'm hoping for. I'm going to start at
9 the back, which is a little weird.

10 A Okay.

11 Q But flip to the back on Page 41.

12 A Okay.

13 Q We're going to talk about addresses so we can
14 clarify this.

15 A Okay.

16 Q The first one, it looks like we have for you, is
17 1201 North University in Pine Bluff?

18 A No.

19 Q Was that ever your address?

20 A No, that's the salon.

21 Q Okay. So that is the salon address?

22 A Well, that's the whole building. If it -- it -- we
23 have different suites --

24 Q Uh-huh.

25 A -- so it just goes to -- if the post -- if the

1 postman gets there and the daycare is the one that's
2 open, they are going to leave the mail there. If they
3 get there and they are closed and I'm open they are going
4 to leave the mail with me.

5 Q Okay.

6 A So -- and usually it comes certified with you guys.

7 Q Okay.

8 A So that's where that glitch comes in.

9 Q So return -- it says on here, "Return to sender,
10 insufficient address," so we probably didn't have enough
11 information there?

12 A Okay.

13 Q Okay. But it looks like it changed, if you look at
14 the next thing we mailed. We started mailing it to --
15 well, this is the former one, I think it's an Olive
16 Street address, yeah, 3200 South Olive, No. 3, also in
17 Pine Bluff. Has that ever been your address?

18 A Yeah, I have -- I have not lived there for about two
19 and a half years.

20 Q Okay. But in 2012, though, that was your address?

21 A What is that, in April? Yeah, I couldn't tell you
22 the exact month that I moved, but I know that I was
23 there.

24 Q Okay. And it looks like --

25 A No, in 2011 I moved from there.

1 Q Okay.

2 A Yeah. And it used -- it went to a Kendyl Street
3 address.

4 Q No. We don't have that anywhere in this file.

5 A Okay. Well, I know that all my mail was coming to
6 the salon.

7 Q Okay.

8 A I never got anything at home. My first time
9 reporting a home address, which is shown in this packet,
10 was the end of last year, and it -- and it shows on --
11 we'll probably cross that page too, when you guys put in
12 into the system for that address.

13 Q Is it still --

14 A So I've gotten everything for my home.

15 Q Is it 4300 Garland?

16 A Yes.

17 Q And that's the correct address?

18 A Yes.

19 Q So you're getting everything at that address?

20 A Yes. That's my current address, yes.

21 Q Okay. And you understand that it's your
22 responsibility to make sure that we have your current
23 address on file?

24 A Okay.

25 Q Do you understand that?

1 A Yeah. I understand that, uh-huh.

2 Q Okay. And then going back to the back end of the
3 packet again, I think it's the 41st page, this is an
4 inspection of violation acknowledgment, it comes -- or it
5 accompanies the inspection report on Page 40.

6 A Uh-huh.

7 Q And it is that -- is that your signature on Page 41
8 there?

9 A Yes.

10 Q So you were aware on 4/27/2012 that you had been
11 cited for enforcement and consumer information violation?

12 A Right. That's the day that she came to the salon.

13 Q Okay. And what your contention is today is that you
14 didn't receive anything following that?

15 A Right. Right.

16 Q Okay. But this 1201 South University, it was a good
17 address, it just didn't have a suite number?

18 A It's North University.

19 Q Is it North?

20 A Uh-huh.

21 Q Yes. It is. You're right.

22 A Uh-huh.

23 Q Okay. So that's a good address, it's just the suite
24 number -- should the suite number have been on there so
25 that it would have for sure gotten to you?

1 A Yeah. I prefer to get it at my home address.

2 Q Okay. No, I'm not --

3 A -- when we changed it, yeah --

4 Q I understand that.

5 A Yeah.

6 Q And everything now is going to the 4300 Garland

7 Avenue address --

8 A Yeah.

9 Q -- and you're getting it and we're good?

10 A Okay.

11 Q What I'm asking is, back when you were using this

12 1201 North University address, would it have eventually

13 gotten to you without a suite number or did it have to

14 have a suite number on there?

15 A Well, it would have been better for it to have a

16 suite number because, by it being so many employees in

17 that building, it's no guarantee that it's going to get

18 to me, because it didn't.

19 Q Okay. So were you getting, like, licensing renewal

20 things from us that told you when to renew your license?

21 A Yeah, I got one, and that was for this year, the

22 license that expired in April 2014, this one here.

23 Q At that Garland Avenue address?

24 A Yes. I got it at my home address.

25 Q Ms. Surratt, you own the salon, Trinia's Diamond

1 Hair Care?

2 A Yes, ma'am.

3 Q And am I pronouncing your name right? I don't want
4 to mess up.

5 A Yeah. It's Trinia.

6 Q Okay. So -- and you're aware that, as the owner,
7 you're responsible for making sure all licenses are
8 current and all rules are followed?

9 A Yes, ma'am.

10 Q And does it tell you the expiration date on the
11 license?

12 A Yeah.

13 MS. PITMAN: Okay. Okay. I don't think I
14 have any other questions.

15 THE WITNESS: It was April of this year.
16 April, the end of April 2014.

17 MS. PITMAN: Okay.

18 HEARING OFFICER: Okay. Ms. Surratt, you
19 could either tell the board your side now or
20 you can wait and I'll give you another
21 opportunity after Ms. Pitman has called the
22 rest of her witnesses.

23 MS. SURRATT: Okay. I'll wait.

24 HEARING OFFICER: Okay. Well, I'm going
25 to go ahead and let the board members, if they

1 have any questions right now --

2 MS. SURRATT: Okay.

3 HEARING OFFICER: -- can ask you those
4 questions and -- but they will also get another
5 opportunity in case something else comes up
6 they want to ask you about.

7 MS. SURRATT: Okay.

8 HEARING OFFICER: That way we can try to
9 get as much information out through the -- to
10 process.

11 THE WITNESS: Okay.

12 HEARING OFFICER: Board members, questions
13 for Ms. Surratt right now? And you will
14 have -- like I just said, you all will have
15 another chance.

16 MS. ANDERSON: If you will turn to -- Ms.
17 Surratt, Trish Anderson. If you will turn to
18 Page 41, 40 and 41 on here.

19 THE WITNESS: Uh-huh.

20 MS. ANDERSON: It has your home address
21 also.

22 THE WITNESS: Uh-huh.

23 MS. ANDERSON: So it looks like that they
24 probably made sure that we had all of that
25 covered. You never received anything at home

1 from the board?

2 THE WITNESS: No, ma'am. I wasn't -- I
3 moved from this address in 2011, I can -- it's
4 no problem to have proof of that, but I -- I
5 wasn't -- this says April 27, 2012.

6 MS. ANDERSON: So that was the address you
7 had given the board for your licensure? Is
8 that correct then?

9 THE WITNESS: I -- I never called in and
10 gave it to them. I don't know if maybe Ms. Pat
11 just -- looked like Ms. Pat probably just wrote
12 it down extra when she got to the salon,
13 because this would have been like the same
14 visit that she made me aware of the charges.
15 And I said, what? Charge for what? And the
16 next day, on the 28th, as you see, I came up
17 here and I signed on the 28th the sheet
18 saying that I would pay but I was requesting
19 installments, so that -- it's the installment
20 sheet or anything from this page that I had to
21 sign to renew that I did not receive.

22 MS. ANDERSON: Is that our Page No. 27?

23 THE WITNESS: It's on Page 18. Well,
24 the -- the consent agreement is on Page 18, 17
25 and 18. And there is also one showing the

1 payment plan that I never signed because I
2 never got it.

3 HEARING OFFICER: Hold on one second,
4 let's -- let's -- I want to make sure we've got
5 everybody looking at the right pages.

6 MS. PECK: 28 and 29.

7 HEARING OFFICER: 28 and 29 for the
8 consent agreement.

9 MS. ANDERSON: You did sign --

10 THE WITNESS: Oh, 28? Well, mine is 18.
11 Okay.

12 MS. ANDERSON: You did sign the consent?

13 THE WITNESS: Uh-huh.

14 MS. ANDERSON: And that was dated
15 April 28th of '12.

16 THE WITNESS: The next day.

17 MS. ANDERSON: Okay. And that's Page 2 of
18 Page 1. And Page 1 was the violation itself,
19 145 -- so at that time you agreed to pay
20 \$1,275?

21 THE WITNESS: Yes, ma'am.

22 MS. ANDERSON: Okay. But the other
23 payment of the \$1,973 -- or the \$698, you did
24 not -- you did sign the consent for both of
25 those?

1 THE WITNESS: On the same day.

2 MS. PITMAN: On the same day. So you did
3 agree to pay \$698 and \$1,275?

4 THE WITNESS: And -- and I also that same
5 day put in a -- a dispute, because I didn't
6 understand, and I still don't, where those
7 extra charges came from. Because, as far as
8 violations, what I have is only the three
9 that's in the packet, and it doesn't add up to
10 that total.

11 MS. ANDERSON: Okay. You do understand
12 that when you read the law, we can fine you up
13 to a thousand dollars?

14 THE WITNESS: Per --

15 MS. ANDERSON: Per --

16 THE WITNESS: Per violation? Yes, ma'am,
17 I read the packet.

18 MS. ANDERSON: Okay. So I don't know
19 either, but just so you know.

20 MS. PECK: But you gave them your address,
21 the 3200 Olive?

22 THE WITNESS: On?

23 MS. PECK: On the day you signed?

24 THE WITNESS: In March?

25 MS. PECK: April 28th.

1 THE WITNESS: Well, see, I don't -- when I
2 signed this, there is also another sheet on
3 Page 27 that the payment plan was put in place,
4 and that I never received. Now, I don't know
5 if they went back and calculated on this sheet
6 and wrote this, but that wasn't there when I
7 signed this sheet. Now, the address the --

8 MS. PECK: But you didn't give them the
9 address or you didn't verify or before you left
10 you didn't ask where they were going to be
11 sending that information to you?

12 THE WITNESS: Well, see, I talked to
13 Ms. Pat the day before on April 27th, and she
14 wrote on the bottom -- on the inspection sheet
15 my address, and I know that when I went in to
16 dispute this on the very next day that I came
17 up here, that on that violation sheet, that my
18 address was written. But my conversation when
19 I got up here was basically trying to figure
20 out where those -- those charges came from.
21 So -- but I was also renewing my license at the
22 same time. And the only way that I could
23 renew, because after talking to Ms. Pat, I was
24 like, I definitely don't want any extra
25 charges, the only way I could renew was to sign

1 this and someone get back with me later.

2 That's when the payment plan came out, of which
3 I never received. So I figured that when I put
4 my paper in writing and there was no clear way
5 of saying, you're charged with this, you're
6 charged for that, as far as violations, this
7 last one I just got, I've only had three, being
8 this last one being the third one, I figured
9 that it had been taken care of. I said, well,
10 a thousand dollars in charges, I don't have any
11 violations to add up to that, so I put in the
12 dispute. And as far as my knowledge, if I
13 never received it, then I just renewed after
14 that and just left it as is.

15 This payment plan -- but this, when I
16 signed this, it was that day in the office to
17 renew. I -- someone probably went back and
18 calculated it off of this, but, no, I didn't
19 give them that that day, but the day before --

20 MS. PECK: You didn't want to make sure
21 that they had the correct address?

22 THE WITNESS: Well, I -- the day before is
23 when the inspection was done, that's what
24 prompted me to come up to state board on the
25 28th .

1 MS. PECK: Right. Yeah. I -- I got that.
2 Okay. I'm good.

3 HEARING OFFICER: Further questions from
4 the board?

5 MR. TABB: Yes.

6 HEARING OFFICER: Go right ahead.

7 MR. TABB: On the inspection that was done
8 on the 27th --

9 HEARING OFFICER: Can you tell us what
10 page you're looking at just so we --

11 MR. TABB: I'm looking at Page 40.

12 HEARING OFFICER: I just want to make sure
13 we're all on the same page.

14 MR. TABB: On Page 40, I notice you said
15 that Ms. Pat may have written the home address?

16 THE WITNESS: Uh-huh.

17 MR. TABB: In 2012, why would she write
18 that particular address?

19 THE WITNESS: Because when -- when she
20 came on the 27th --

21 MR. TABB: Uh-huh.

22 THE WITNESS: -- that was my first being
23 made aware that I owed fines, that those are
24 the ones I'm talking about that are rooting
25 back from 2008 --

1 MR. TABB: Uh-huh.

2 THE WITNESS: -- of which I don't have any
3 documentation for it. When she told me that,
4 of course, it -- it blew my mind, I came up
5 here the next day. I told her, well, if I do,
6 I've never heard anything about these fines.
7 So she, naturally, I guess, took down another
8 address that I could be reached at because she
9 knew that when she came, that there were other
10 businesses there, so our mail just goes to --
11 when the mail carrier comes, it goes to whoever
12 is open, and it's at their discretion if they
13 bring it to you. But by it being certified,
14 it's one in here that someone else signed for,
15 it's not a signature, it just says Trinia's,
16 the -- the business name.

17 MR. TABB: Uh-huh.

18 THE WITNESS: And someone signed for it
19 and got that one letter, but any other ones,
20 you -- it shows the emails where they are
21 saying, it's an insufficient address, we have
22 not been able to get in contact with her, up
23 until you guys got my 4300 Garland address
24 which was the end of last year. All of these
25 charges are rooted before that.

1 MR. TABB: Now --

2 THE WITNESS: So I had no knowledge of
3 that.

4 MR. TABB: Well, I was just wondering,
5 because you signed that particular inspection
6 report that day that she came?

7 THE WITNESS: Uh-huh.

8 MR. TABB: And if you moved in 2011, and
9 she wrote your home address on here, you know,
10 did you not think to tell her or did that
11 address get written -- how -- I'm just trying
12 to figure out with if you moved in '11 --

13 THE WITNESS: Oh, I understand.

14 MR. TABB: -- like how did she write that
15 address in 2012?

16 THE WITNESS: Well, now, if she -- when
17 she wrote that address, we were talking about a
18 letter that -- that came out and it was after
19 two -- it was after this April 27 date, and I
20 was saying that I wasn't living there then.

21 MR. TABB: Okay.

22 THE WITNESS: I can -- I can pull up maybe
23 an exact date that I moved, but I know that
24 whenever that next letter came out, I wasn't at
25 that address.

1 MR. TABB: Okay.

2 HEARING OFFICER: Further questions right
3 now from the board members?

4 Okay. If there are none, thank you very
5 much, Ms. Surratt.

6 Ms. Pitman, you can call your next
7 witness.

8 MS. PITMAN: I'll call Kelli Kersey.

9 HEARING OFFICER: Go right ahead.

10 WHEREUPON,

11 KELLI KERSEY,
12 having been called for examination, and having been first
13 duly sworn by the Hearing Officer, was examined and
14 testified, as follows:

15 THE WITNESS: Kelli Kersey, Arkansas
16 Department of Health, Cosmetology Section,
17 Section Chief. Sorry.

18 DIRECT EXAMINATION

19 BY MS. PITMAN:

20 Q Ms. Kersey, we've heard Ms. Surratt tell us about
21 the addresses. Can you explain to us, starting at the
22 back of the packet --

23 A Okay.

24 Q -- that's chronological, what as on here?

25 A Okay. The 1201 North University is her salon

1 address. We did make several attempts to get it to her,
2 so on April 25th, we contacted our inspector to have
3 her hand deliver it, so that is what the inspection sheet
4 is for April 27, 2012. She hand delivered the violation
5 letter to her. The license had not been renewed since
6 2012, and at that time in the rules, it was 50 dollars
7 plus a dollar a day every day your license was late.
8 That's how that added up, because it was four years since
9 her license had been renewed. She came in the next day.

10 Q Can you back up?

11 A I'm sorry.

12 Q No, you're fine. Back up to Page 39?

13 A Okay.

14 Q There is an email here from Ms. Pat Jackson?

15 A Uh-huh.

16 Q She was an inspector at the time?

17 A Correct.

18 Q Okay. It says there, "Well, I got the papers, also
19 got home number and home address." What does that mean?

20 A That means that the inspection sheet that is on
21 Page 40 and 41, she took in to Ms. Surratt, and she sent
22 us an email saying that she had gave them to her, she had
23 gotten her phone and her home address.

24 Q Okay.

25 A Which was the 3200 South Olive Street, No. 3.

1 Q Okay. So for whatever reason, I don't -- I don't
2 know when -- when Ms. Surratt moved, but for whatever
3 reason, Ms. Jackson felt that 3200 South Olive, No. 3,
4 was her home address back on 4/27/2012?

5 A Correct.

6 Q Okay.

7 A So she came in on the 28th, signed the consent for
8 payments, she signed -- she signed the consent, was able
9 to renew because she consented that she was going to pay
10 these violations. We sent out -- apparently, they talked
11 about it, she signed it. The page -- Page No. 27 that's
12 not signed is our copy, she got a copy sent to 3200 South
13 Olive Street, No. 3, which is the address she had given
14 us the day before.

15 Q Okay. The handwriting on Page 28 through 29 --

16 A Uh-huh.

17 Q -- 3200 South Olive, do you know who would have done
18 that?

19 A It appears to be Teri's handwriting.

20 Q Okay. So Teri Preacher's?

21 A Teri Preachers, she was doing violations at that
22 time.

23 Q Okay. And those were just her notes so that she
24 could prepare the July 12th letter?

25 A Correct.

1 Q Okay. So Ms. Surratt would not have seen that stuff
2 at the bottom there?

3 A I'm not sure if she saw it, if they talked about it
4 in the office.

5 No. Teri says no.

6 Q Okay.

7 A But they did agree to payments that day, that's why
8 she was allowed to renew her license.

9 Q Okay. Moving on up to the proposed findings of fact
10 I'm --

11 COURT REPORTER: I can't hear you.

12 BY MS. PITMAN:

13 Q Oh, I'm sorry. I'm talking with my hand over my
14 mouth. The proposed findings of fact.

15 A Page 24.

16 Q 22, I think is the copy of the thing.

17 A Oh, okay. This was the finding of fact from the
18 hearing, which is May 21, 2012, that was sent to that
19 same address.

20 Q Okay. The 3200 Olive Street address?

21 A Correct.

22 Q And that brings us up to 10/29/13 inspection?

23 A Yes. Oh, I'm sorry. What page are you on?

24 Q Page 19 and 20.

25 A Yes. Kerri went there, she obviously did not have a

1 license posted, she verified with the office that she did
2 have a current license so she got those two fines, which
3 was \$100.

4 Q At that time it looks like on Page 20 --

5 A Uh-huh.

6 Q -- or what is my Page 20, her mailing address was
7 the 4300 Garland Avenue?

8 A Yes.

9 Q Okay. Was that where the violation letter was
10 mailed to for the -- that inspection?

11 A Yes.

12 Q Okay. Then what happened?

13 A Then the inspection for May 9, 2014.

14 Q Okay.

15 A Which she -- I'm sorry.

16 Q No, go ahead.

17 A Yeah. She didn't have a current license, her
18 practitioner's license was not current, and neither one
19 of them were posted.

20 Q Okay. And that's what Ms. Smith will be testifying
21 about here in a minute?

22 A Correct. That is the hearing we're here for.

23 Q Okay. On --

24 HEARING OFFICER: And what page is that,
25 just to make sure?

1 THE WITNESS: Page 16 and 17.

2 HEARING OFFICER: Okay.

3 MS. PITMAN: I think my book might be
4 numbered differently.

5 THE WITNESS: Yeah. 16 and 17.

6 BY MS. PITMAN:

7 Q Okay. So I'll try not to say page numbers.

8 On the 10/29/13 inspection, and the violation letter
9 that went out, was this ever paid?

10 A I -- I do not believe so.

11 MS. PREACHERS: No.

12 THE WITNESS: I don't think any of them
13 have been paid.

14 BY MS. PITMAN:

15 Q Okay. And I'm going to go ahead and get your
16 testimony about the Notice of Hearing that was sent out.
17 Did we send out a violation letter on this May 9, 2014,
18 inspection?

19 A I believe -- or, no, I think we just sent her a
20 notice of hearing.

21 Q Okay.

22 A Because of -- because she had not paid the previous
23 violations.

24 Q Okay. And --

25 A I'm sorry.

1 Q -- we originally set this hearing for the July CTAC
2 meeting?

3 A Correct.

4 Q Okay. And Ms. Surratt indicated -- did she actually
5 receive that Notice of Hearing?

6 A She did receive it.

7 Q Okay. Is that on page -- well, it's my Page 11.

8 A Yes.

9 Q Okay. What day did she sign for that?

10 A 7/2/2014.

11 Q Okay. Did Ms. Surratt let you know that she was not
12 going to be able to attend that hearing?

13 A She did the Tuesday after the hearing.

14 Q The Tuesday after the hearing she let you know that
15 she would not be able to attend the hearing?

16 A Correct.

17 Q Okay. So we reset -- so be -- before the hearing
18 did she ever let you know that she would not be at the
19 hearing?

20 A No.

21 Q So we had the hearing?

22 A Yes, we had the hearing.

23 Q Okay.

24 A She called me the Tuesday after, said something had
25 came up and she couldn't make it and wanted to know if we

1 would rehear her case.

2 Q And can we as the Cosmetology Section make that
3 decision, whether or not to rehear her case, or did we
4 just set it so that the CTAC could hear it?

5 A Right. We just set it so you guys could hear it
6 again.

7 Q Okay. And we sent her a notice of hearing for
8 today's hearing date?

9 A Yes.

10 Q And it's dated September 15 at 9 a.m. in Room 801 of
11 the Freeway Medical Building?

12 A Yes.

13 Q And it's also listed out what she was actually being
14 brought to the hearing for today?

15 A Correct.

16 Q And that would be the 10/29/2013 inspection and the
17 5/9/2014 inspection?

18 A Correct.

19 Q What is the proposed fine for the violations,
20 Ms. Kersey?

21 A The proposed fine for today is \$400.

22 Q And what is that based on?

23 A That is based on her license -- well, I better get
24 to it. Salon license wasn't posted, \$50, the floors and
25 mat -- no, that's not right. Is it?

1 MS. ANDERSON: Uh-huh.

2 THE WITNESS: Yeah. Her salon license
3 wasn't current.

4 MS. ANDERSON: Oh, no --

5 THE WITNESS: Oh, I'm sorry. I was
6 reading both of those. So it's for the
7 10/29 and the 5/9, yeah. Sorry. So 250 salon
8 license and \$50 salon license not posted.

9 BY MS. PITMAN:

10 Q Okay.

11 A Sorry.

12 Q So the total is \$400?

13 A Yes.

14 Q And that includes both the 10/29/2013 and 5/9/2014?

15 A Correct.

16 Q And the CTAC, at the last hearing, they -- they
17 imposed a \$400 penalty?

18 A Correct.

19 Q Are you asking today that they affirm that decision?

20 A Yes.

21 MS. PITMAN: No other questions.

22 HEARING OFFICER: Okay. Ms. Surratt,
23 questions for Ms. Kersey?

24 MS. SURRATT: Yes.

25 HEARING OFFICER: Go right ahead.

CROSS-EXAMINATION

BY MS. SURRATT:

Q Was I ever made aware, was anything ever sent out to me pertaining to being charged a dollar a day, in that period of time that my license was expired until I went back into the salon? Was I ever made aware of that?

A You -- I can --

Q Is there anything saying that -- is there -- is that stated anywhere?

A In your violation letter that you got that Pat hand delivered to you.

Q Is that --

A On the --

Q -- is that a part of this packet?

A No, because it was -- we already had that hearing.

Q Because my first hearing of that was us talking on the phone?

HEARING OFFICER: Wait, let's keep it to one of y'all speaking at a talking, it makes it a lot easier for Ms. Susan to get everything down.

MS. SURRATT: Okay.

THE WITNESS: No, it's not in here because that was a completely different hearing.

BY MS. SURRATT:

1 Q Okay. So I -- I -- so it would be safe to say that
2 I -- I didn't know anything about those charges? It's
3 not even in the packet where they come from?

4 A Well, the -- it's not safe to say that, because she
5 hand delivered it to you on May 27.

6 Q No, she -- did she --

7 A I mean on April 27th.

8 Q Did she hand deliver something to me -- because I
9 can only ask questions; right?

10 HEARING OFFICER: Right.

11 BY MS. SURRATT:

12 Q Did she hand deliver anything to me saying what I
13 was being charged for, what I was in violation of?
14 Because, as far as the record, it shows that my license
15 expired and I came back and renewed. Like I said, during
16 that time, between undergrad and getting a masters, I --
17 there was not -- there has never been anyone else in that
18 salon but me, so when my first hearing of this on that
19 April the 27th, that was my first hearing of me being
20 charged for -- I didn't know that you are still charged
21 even if you're not operating, just because you come and
22 renew whenever you're getting back in the right standings
23 and things. So my question was, was I ever made aware
24 that I was being charged per day in that time period of
25 that extended period of time?

1 A Did you -- it depend -- I haven't looked at the past
2 inspection, because we're not talking about that hearing,
3 we're talking about this hearing that --

4 Q Well, yeah. See, all of this dates back to 2008.

5 A Yeah.

6 Q Like even -- even in this packet, so it should -- it
7 would be in here.

8 A Yeah. No, it's a different hearing.

9 Q So I was never made aware of that?

10 A Yeah. You were, because she delivered it to you.

11 Q Okay. To my knowledge, what Ms. Pat delivered to me
12 that prompted me to come the very next day was stating
13 that I owed a certain amount of money. It didn't state
14 where it came from. So that's why when I came the next
15 day and I put in writing what I was disputing wondering
16 where the charges came from, it's because I never had any
17 knowledge of that.

18 Next question. Would you agree that you guys never
19 got in touch with me before April 27th?

20 A I'm not --

21 Q That was your first time -- in your -- in your
22 emails that you guys sent to each other, it was saying
23 that we have tried several times and we cannot get in
24 touch with her at this address, which is what prompted
25 you to tell Ms. Pat to come and make me aware of -- of

1 my -- my standings with you guys on the 27th?

2 A Okay. Yeah. Okay. I think --

3 Q Okay. So you guys were never able to get in touch
4 with me before that date?

5 A Correct.

6 Q Right. Okay. When -- so that means whenever you
7 guys did reach me, I did respond, it wasn't a matter of
8 me disregarding that I've had a violation. Because I
9 believe that the -- the last findings in the meeting that
10 I wasn't here for, when we spoke on that Tuesday after
11 the last hearing, July --

12 A Uh-huh.

13 Q -- this past one, when I called you Tuesday after
14 the date, would you agree that -- that I had a situation
15 that clearly made me unable to attend? That it wasn't
16 just me not wanting to? Did we not speak the day
17 before -- two days before the trial and I assured you
18 that I would be here --

19 A Correct.

20 Q -- for that hearing?

21 A Uh-huh.

22 Q So on that date when I didn't show, I submitted
23 this, that I had to go to a higher court on the 21st.
24 This up here shows on 7/20 the court date -- the date
25 here was on July 21st. On the 20th I was pulled over

1 for a traffic violation and I had to do a promise to
2 appear the very next morning, which was on the 21st,
3 that's dated here, so I couldn't make it here. That's
4 why I called, you guys were in meeting that whole day,
5 the next day I called and said, I don't know if this is
6 bad luck or what, but I had every intention -- I emailed
7 over, and I said -- I did email over, as far as doing
8 everything that I could or know to do to make sure that
9 I'm, you know, within right standings, that -- that's the
10 most that I did or I could do. I emailed over saying --
11 because we had just spoken and I assured you that I would
12 be here, saying that I had every intention of coming but
13 something unforeseen the very night before kept me from
14 being at the meeting. In that meeting is when -- when
15 the decision was made to revoke my license until I paid
16 the full penalty that I had no knowledge of, until we --
17 until --

18 MS. PITMAN: Can I object? She's not
19 asking a question, she's testifying.

20 MS. SURRATT: Oh, okay. Well, I can -- I
21 can ask questions.

22 HEARING OFFICER: That objection is so
23 noted. You have to ask questions at this time,
24 but I will give you another opportunity to tell
25 your side of it.

1 MS. SURRATT: Okay.

2 HEARING OFFICER: This time is just for
3 your questions to Ms. Kersey.

4 MS. SURRATT: Okay.

5 BY MS. SURRATT:

6 Q So would you agree that -- that my not being here
7 was due to something of a legitimate stance?

8 A Yeah, I agree.

9 Q Okay. Because -- okay. Okay. I have one more
10 question. Is there anything that -- that I can have or
11 that you have to show me what date I began being charged
12 back in 2008 until the time that I renewed and as to how
13 I accrued those charges? I never received a violation
14 for it so naturally I wouldn't know, if nothing was ever
15 given to me pertaining to it, because what --

16 A Well, if you will look on page -- let me find my
17 page -- 21, your license expired 12/31/2008 and was not
18 renewed again until 5/4/2012.

19 Q Uh-huh.

20 A Okay. So for four years your license was not
21 renewed.

22 Q Okay. The years that I stated where I -- what was
23 going on.

24 A Did you --

25 Q And those four year periods, between two schools and

1 having a child, I'm -- the thing that I'm saying is have
2 you -- did you guys do any -- even any inspections within
3 that time? How would I know that -- that's just like
4 right now, if I decided to --

5 HEARING OFFICER: Okay. Ms. -- Ms.

6 Surratt, let's keep it to a question.

7 BY MS. SURRATT:

8 Q So the question, if I decided right now to take a
9 break from doing hair and my license expires in that time
10 because I'm going to do my internship, and I don't renew
11 again until I plan to be in the salon, will I be charged
12 per day that I'm not --

13 A If you -- if you don't --

14 Q -- in the salon?

15 A -- notify the salon that you closed it, because
16 that's by rule that you have to notify us that you're
17 closed, and if you don't we assume that you're open and
18 we keep going by inspecting.

19 Q Okay. So no one inspected then in that period of
20 time?

21 A Well, I mean, I -- I can't say that.

22 Q So as far as -- so as far as you all knew I just
23 popped back up 2012 and renewed?

24 A Well no, I can find the inspection date, I can get
25 them and I can get them.

1 Q Well, that's no problem --

2 A And show you --

3 Q -- but I want to --

4 A -- you were closed today or whatever so --

5 Q Okay. Okay.

6 A Yeah.

7 Q But as far as this packet, because it has 2008 but
8 it doesn't have, you know, anything?

9 A Yeah.

10 Q So I'm just trying to get a thorough knowledge of --
11 of explaining that -- questions, I forgot.

12 Okay. So you do agree that there was no
13 communication with me on those charges so I wouldn't know
14 so that's why I was saying that I just never addressed
15 paying them?

16 A Well, you did not have charges until we were able to
17 inspect you.

18 Q Right.

19 A Which was in --

20 Q 2012?

21 A -- you know, so that went back to all the way back
22 to when we could inspect you, so your license was not
23 current for four years.

24 Q And when -- on that April 27th, I came to you --
25 do you agree that I came immediately to -- to address the

1 situation that I had no knowledge of on the 28th?

2 A Yes. I agree you came to --

3 Q Would that seem immediate?

4 A And signed a consent that you would pay payments and
5 you didn't, and so we let you renew your license, that's
6 what I agreed to.

7 Q Okay. So you -- you believe that I signed the sheet
8 agreeing to make the payments?

9 A Uh-huh.

10 Q Well, no. This sheet right here, do you see a
11 signature on this sheet that --

12 A No.

13 Q -- has signatures on it?

14 A Because that's our copy, you see it says copy on it.
15 And you have that one --

16 Q And you agree --

17 A -- you have your copy.

18 Q And you agree that the next letter that came out
19 after this installment was put in place, it was returned
20 because it didn't reach me; right?

21 A I agree that you signed 28 and 29 saying that you
22 would pay the 1,275 and 698.

23 Q Okay. So do you agree that 28 and 29 was before the
24 installments were made? Because they were done on July
25 the 12th?

1 A Yeah.

2 Q This was done April 28, so this wasn't put in
3 place --

4 A I agree that you consented to pay it.

5 Q Right. Right. I consented --

6 A But no matter what the -- yeah.

7 Q But this says I agree to pay civil pen -- penalty,
8 however I would like request -- to request payment
9 arrangements.

10 A Uh-huh.

11 Q So the payment arrangements wasn't set up until,
12 July this was April.

13 A Okay.

14 Q So whenever the next letter from my installment came
15 out, that's what I didn't receive.

16 MS. PITMAN: What's your question?

17 BY MS. SURRATT:

18 Q Oh, well, do you agree that when the next letter
19 came out, because this is after -- this is months after
20 that April that I signed --

21 A Uh-huh.

22 Q -- to renew my license, do you agree that this --
23 these installments were put in place a couple of months
24 later and the next corresponding that was sent out from
25 you guys, I didn't receive it?

1 A I'm not going to agree with that because I don't
2 know because we sent it --

3 Q Does your records reflect that?

4 A We sent it to the address you gave us so --

5 Q But does your record -- because it's certified, so
6 in the packet it shows --

7 A That --

8 Q -- where nothing was signed?

9 A Yeah, that's -- that's not sent certified.

10 Q Well, yeah. So --

11 A That's not.

12 Q So you don't agree that I didn't receive it
13 because --

14 A I have no knowledge if you received it or not.

15 Q Okay. But you do agree that your first being able
16 to get in contact with -- with me has been since I -- you
17 guys started using my home address, the 4300 Garland?

18 A Your new --

19 Q Is that the first?

20 A Your new home address, because your old one was 3200
21 that you gave us on May 27th.

22 Q Right. Right.

23 A April 27th, I'm sorry.

24 Q Right, which I wasn't living there.

25 A But you gave us that address.

1 Q But that letter didn't come out that same day, the
2 letter --

3 A Did you --

4 Q The letter came back after she -- do you agree that
5 the letter comes back after the inspection is done?

6 A I agree that you did not tell us the new address.

7 I -- I agree that I sent it to the address that you gave
8 us.

9 Q Okay. Which is this sheet here?

10 A Yeah.

11 Q With the installments?

12 A Yeah.

13 Q Okay.

14 MS. SURRATT: And now I'm just going
15 through making sure I don't have any other
16 questions, because I know we switch over to
17 something else.

18 HEARING OFFICER: That's fine.

19 BY MS. SURRATT:

20 Q Okay. And just -- just -- just for my mental
21 reference, and you did say that if -- if I decided to do
22 intern and not work and my license expire in that time,
23 I'm still charged per day for that or it -- I'm supposed
24 to call and say that I'm going to be out?

25 A If -- if you don't call -- if you do not notify the

1 office that your salon is closed, yes, to us you're still
2 open.

3 Q Okay. Okay. Okay. Well, two more questions,
4 maybe, because it's my livelihood that we're talking
5 about.

6 So would you agree that you do have people that come
7 before you that have been assessed big fines and it's
8 clearly, clearly stated that you knew your obligations
9 and we've had everything correct for you to handle this
10 matter and they still blatantly just don't respond or
11 don't do what they are supposed to do? Would you agree
12 that that occurs?

13 A I'm not -- I don't think I -- I mean I don't really
14 want to discuss anyone else.

15 Q Okay.

16 A I mean is that what you're saying?

17 Q Okay. Typically -- maybe I'm wording it wrong.
18 Typically, the only -- the thing that I'm trying to
19 iterate here is, in the midst of all of the discrepancies
20 with what I received and what I didn't receive, what I'm
21 asking you is, do you feel as though -- because the only
22 time you've been able to communicate with me was from you
23 getting an accurate address with me and everything with
24 me was immediate whenever I found out -- actually found
25 out about it, so I'm asking you, would you agree or -- or

1 disagree that my not handling this matter is due to my --
2 me just disregarding it or me just pretending as though I
3 got it and I didn't?

4 MS. PITMAN: I don't know if this is a
5 valid objection in an administrative hearing,
6 but that's asking Ms. Kersey to guess how she
7 felt about something and I don't know that
8 that's even relevant.

9 MS. SURRATT: Well, I know that it's
10 relevant, I know that it's relevant because you
11 have some people that -- that are sitting in
12 the same seat that really just don't care, but
13 I'm justifying -- would you not agree that as
14 soon as you guys were able to get in contact
15 with me that I -- I responded immediately, that
16 it's not just me sitting, you know, twiddling
17 my fingers on something if I -- had I known --

18 HEARING OFFICER: Ms. Surratt, I'm -- I'm
19 going to note Ms. Pitman's objection for the
20 record.

21 MS. SURRATT: Okay.

22 HEARING OFFICER: Your questions are
23 getting a little speculative.

24 MS. SURRATT: Okay.

25 HEARING OFFICER: So let's try to keep

1 them on point for your hearing today, so if you
2 can kind of rephrase it maybe like you did that
3 second time maybe Ms. Kersey can answer that.
4 But, you know, I don't -- I don't want to put
5 Ms. Kersey into a position to where she is
6 trying to speculate as to what other
7 cosmetologists that come before the board
8 are --

9 MS. SURRATT: I will definitely not, no,
10 definitely not.

11 HEARING OFFICER: But that's kind of where
12 it sounded like it was going.

13 MS. SURRATT: No, no, no. I was just
14 trying to distinguish the differences between
15 just having someone that -- that just doesn't
16 respond, just reiterating that the only reason
17 is because I had no knowledge. I didn't
18 receive any of this, and when I did, I was
19 asking, would you agree that this next day,
20 when she came and was able to get in touch with
21 me, I called. The next day when I finally
22 received something through the mail, I called.

23 HEARING OFFICER: So -- so you're just
24 wanting Ms. Kersey to agree that --

25 MS. SURRATT: To acknowledge.

1 HEARING OFFICER: -- that after Pat was in
2 your salon on April 27th, that you come into
3 the office on April 28th?

4 MS. SURRATT: Right. And from that visit
5 on April 28th, I never received anything
6 else.

7 HEARING OFFICER: Well, let's -- let's let
8 Ms. Kersey answer the, did you come into the
9 office on the 28th after Pat was in your
10 salon on the 27th? And then if you have any
11 more questions, then we'll -- I'll let you ask
12 Ms. Kersey those questions.

13 MS. SURRATT: Okay.

14 HEARING OFFICER: Ms. Kersey?

15 THE WITNESS: Yes.

16 HEARING OFFICER: Do you have any more --
17 more questions for Ms. Kersey?

18 MS. SURRATT: No.

19 HEARING OFFICER: Okay.

20 MS. PITMAN: Clarify questions with
21 Ms. Kersey?

22 HEARING OFFICER: Go right ahead,
23 Ms. Pitman.

24 MS. PITMAN: Okay. There is just two
25 things.

REDIRECT EXAMINATION

BY MS. PITMAN:

Q Okay. The first one is the issue of notice of what's in our regulations. There is a copy of the rules and regulations right there. I mean, when cosmetologists are licensed, are they notified of those rules and regulations?

A Yes.

Q How?

A Well, it depend -- I mean if they go through school, their school teaches them the rules and regulations. Or if they come in by reciprocity, they -- you know, they have to take our law test.

Q Okay. And is that -- a copy of that available to them?

A Yes.

Q And are they put on notice that they are held to know everything that's in that book?

A Yes.

Q And it's in that book that you will be charged for every day that you don't renew your license?

A Yes.

Q Okay. The other thing, just want to clarify for everyone, we talked about all of these past violations for purposes of letting the CTAC know her history, but

1 we're only here today to ask them to impose a \$400
2 violation for what happened on 10/29/13, and I can't
3 remember the other date, I think it's May 9, 2014.
4 Right?

5 A Yes.

6 Q So all the 698, 1,279, we're not here about that
7 today?

8 A (Shaking head from side to side.)

9 MS. PITMAN: Okay. That's all.

10 HEARING OFFICER: Okay. You clarified.

11 So, board members, questions for Ms. Kersey?

12 Okay. Thank you, Ms. Kersey.

13 Ms. Pitman, call your next.

14 MS. PITMAN: Call Ms. Smith.

15 WHEREUPON,

16 ROSELYN SMITH,

17 having been called for examination, and having been first
18 duly sworn by the Hearing Officer, was examined and
19 testified, as follows:

20 THE WITNESS: Roselyn Smith, Arkansas

21 Department of Health, Cosmetology Inspector.

22 DIRECT EXAMINATION

23 BY MS. PITMAN:

24 Q And, Ms. Smith, did you inspect Trinia's Diamond
25 Hair Care?

1 A Yes.

2 Q And what day was that? Because I honestly can't
3 remember.

4 A May 9, 2014.

5 Q Thank you. On May 9, what did you find?

6 A Salon -- she didn't have any license posted, either
7 practitioner or salon. And I called and verified the
8 office to get the numbers. And I didn't write her for
9 floors or anything, I just gave her a warning for that,
10 and the trash, but we talked about the warning, I didn't
11 write it on here.

12 Q And that was for floors?

13 A Floors being dirty and the trash being not thrown
14 out.

15 Q Okay.

16 A But she was on her way out the door so I figured she
17 was going to clean it, there wasn't anymore clients in
18 there.

19 Q So you -- yeah. You talked to her about it and you
20 gave her a warning?

21 A Yes.

22 Q But there was no violation or citation for that?

23 A Huh-uh.

24 Q Okay.

25 HEARING OFFICER: Please be sure,

1 Ms. Smith, to give verbal answers --

2 THE WITNESS: Yes.

3 HEARING OFFICER: -- and don't just shake
4 your head so Ms. Susan can get those down.
5 Thank you.

6 THE WITNESS: So no other verbal
7 arrange -- I mean no other violations.

8 BY MS. PITMAN:

9 Q Okay. So the only violations you cited Ms. Surratt
10 for that day was her salon license not being current, her
11 practitioner's license not being current, and the salon
12 license not being posted?

13 A Yes.

14 Q Okay. Did Ms. Surratt -- was she there that day?

15 A Yes.

16 Q Did she sign for the inspection report?

17 A Yes.

18 Q And did you leave a copy of it with her that day?

19 A Yes.

20 Q What did she tell you, if anything, about these
21 violations?

22 A She said that she didn't know because she didn't get
23 her mail, and that she didn't have a copy -- I just asked
24 her for her yellow -- her previous inspection sheet, and
25 she didn't have any of that.

1 Q Okay. She didn't have any of that?

2 Okay. And I think Ms. Kersey has already testified,
3 but it looks like her address was 4300 Garland Avenue at
4 that time for the mailing address. Do you know that or
5 is that something you wouldn't keep up with?

6 A I wouldn't keep up with that.

7 Q All you know is her salon address was still 1201
8 North University?

9 A Yes.

10 Q Okay. Have you seen Ms. Surratt since May 9, 2014?

11 A No.

12 Q And have you gone back out to Trinia's Diamond Hair
13 Care since that day?

14 A No.

15 Q So, as far as you know, you don't know if any of
16 these have been corrected or not as of today?

17 A No.

18 MS. PITMAN: Okay. No other questions.

19 HEARING OFFICER: Okay. Ms. Surratt, any
20 questions for Ms. Smith?

21 MS. SURRATT: No.

22 HEARING OFFICER: Okay. Board members,
23 questions for Ms. Smith?

24 Thank you very much, Ms. Smith.

25 Ms. Pitman?

1 MS. PITMAN: No other witnesses.

2 HEARING OFFICER: Okay. Ms. Surratt, I'm
3 going to give you another opportunity to tell
4 the board anything else you want, and then I'll
5 give Ms. Pitman and the board members another
6 chance to ask you any questions, so just go
7 right ahead.

8 WHEREUPON,

9 TRINIA SURRATT,
10 having been called for examination, and having been first
11 duly sworn by the Hearing Officer, was examined and
12 testified, as follows:

13 DIRECT TESTIMONY

14 THE WITNESS: Okay. Well, I would just
15 like to say that I'm not disputing the license
16 being expired, her last inspection, I'm not
17 disputing that at all. I will -- I did not
18 understand the charges during the time that I
19 was not in operation. I got a -- I have an
20 understanding of that now.

21 The thing that I'm -- that I'm more so
22 seeking is, like I say, I've never been cited
23 for anything health and safety, you know,
24 anything, you know, detrimental to the client
25 or things of that nature, not that it makes

1 this matter any -- any -- any better, you know,
2 as far as having an expired license. It is my
3 third violation over it -- over years as far as
4 my license being expired. It was -- it had
5 just expired two weeks prior to this last
6 inspection, you know, which I have showing on
7 my license. A lot of that is due to, if I
8 don't -- if I just -- at that time, it had just
9 expired, you know.

10 I'm -- I'm all for any -- anything that I
11 know that I -- that I clearly -- any charges
12 that I know that I had actually accrued, there
13 is no -- no disregard, no resistance on my part
14 in paying my fines. The things that I'm more
15 so seeking today is whatever it is that I am --
16 am charged, I would like to have the payment
17 plan that I actually do see and that I am aware
18 of and I'm -- I definitely make -- assure you
19 guys that -- that no payment would be late on
20 it. The only way that I can pay you guys is by
21 operating my salon. I don't have any other
22 means of making payments besides working in my
23 salon.

24 For whatever it's worth, I mean, that's my
25 passion, even with a masters mental health

1 counseling, hair is what I want to do. I see
2 it as a platform for even my other education.

3 So the thing that I'm seeking today is, I
4 know that a decision was made in the last
5 meeting, that was to revoke my license in my
6 absence, which I clearly show why I was not
7 here, had every intention of being here, is if
8 I could do a payment plan that I can see and
9 sign and while still being able to operate, I
10 just want to reassure you that it's -- it's
11 definitely not me knowing and just not doing,
12 but I literally was just made aware of my
13 obligations and where it had went to. And
14 these are the only violations I've ever had.
15 And I've been out of school since 2003, well,
16 cosmetology school. So for whatever it's
17 worth, I'm just seeking to be able to operate
18 while paying you guys.

19 HEARING OFFICER: Ms. Pitman, any
20 questions for Ms. Surratt?

21 CROSS-EXAMINATION

22 BY MS. PITMAN:

23 Q Make sure I understand, you just are here today so
24 that you can get a payment plan and continue to operate,
25 you're not contesting any of the violations for the May 8

1 and October 29th -- without going into those?

2 A Well, no, those three violations, I know that my
3 license, one of them, they weren't posted and the other
4 two, they were expired, so, no, I'm not contesting it.
5 I -- I -- I do wonder, though, was back in 2008, was it
6 stated in the rules and regulations that if you're not
7 operating, you're charged per day?

8 Q Okay.

9 A Was that in there then?

10 Q I -- I didn't work here in 2008.

11 A Is that something new?

12 Q You do understand that we're not here today to
13 actually fine you for those violations, we brought them
14 up just to as a way to show them what your past is, but
15 we're not here to fine you for anything that happened in
16 '08?

17 A Yeah, it's just my first time to -- ever being able
18 to talk to anybody like in -- in July, that's when I
19 first got my big number of -- of what's owed. You know,
20 so this is my -- other than talking on the phone to
21 Ms. Kelli, you know, so I figured I'm supposed to address
22 it. But, yeah, so I'm not contesting that my license was
23 expired. No.

24 MS. PITMAN: I don't have any other
25 questions if she's not contesting.

1 HEARING OFFICER: Board members, questions
2 for Ms. Surratt?

3 MS. FORD: I do.

4 HEARING OFFICER: Go right ahead.

5 MS. FORD: Ms. Surratt, it says here -- it
6 says here on a consent agreement --

7 THE WITNESS: Uh-huh.

8 MS. FORD: -- that you agree this
9 28th day of April 2012 to pay the 12 --
10 one -- \$1,275 to the Cosmetology Section, and
11 that included that payment in the form of
12 check, money order, with a signed copy of this
13 agreement, and at the bottom, you checked you
14 agree to pay the civil penalty. This is your
15 signature and your phone number here?

16 THE WITNESS: Yes.

17 MS. FORD: And at that time, did you
18 ensure, since you were requesting a payment
19 arrangement, that at that time did you verify
20 that this 3200 South Olive, No. 3 was your
21 address? Since you were expecting -- did you
22 make sure that the section -- Cosmetology
23 Section had a good address to mail these
24 payment arrangements out to you to get them to
25 you?

1 THE WITNESS: No. Not that day.

2 MS. FORD: Okay.

3 THE WITNESS: No, we didn't -- no. Not
4 that day.

5 MS. FORD: But -- but what -- what -- what
6 you have said is that you -- that was very
7 important to you --

8 THE WITNESS: Uh-huh.

9 MS. FORD: -- that you be able to get your
10 payment arrangements and take care of your
11 responsibilities. And but my question would
12 be, whose responsibility would it be to get
13 a -- to make sure you could get those payment
14 arrangements once they were mailed out?

15 THE WITNESS: Right. Well, the -- the
16 only thing I knew to do was the month before I
17 gave Ms. Pat my physical address then.

18 MS. FORD: Uh-huh.

19 THE WITNESS: When I made it to the office
20 on this day, the 28th --

21 MS. FORD: Uh-huh.

22 THE WITNESS: -- my biggest concern was
23 where did these charges come from.

24 MS. FORD: Okay.

25 THE WITNESS: My first hearing about being

1 charged per day was on the phone the other --
2 the other week and today, so --

3 MS. FORD: And when did you get your
4 license?

5 THE WITNESS: When did I get my license?

6 MS. FORD: Uh-huh.

7 THE WITNESS: I got my license in 2004.

8 MS. FORD: At that time was one of the
9 things that were in your laws and regulations
10 is that it's the practitioner's responsibility
11 to keep up with the rules and the regulations
12 for your industry?

13 THE WITNESS: Meaning my address?

14 MS. FORD: No, no, no, no, no, rules and
15 regulations. The rules and regulations for
16 cosmetology in the state of Arkansas, when you
17 got your license and you went over your -- when
18 you were in school and you went over your rules
19 and regulations, laws, statutes, that type of
20 thing, at that point, did you know that rules
21 and regulations were your responsibility or my
22 responsibility or his? It's every
23 practitioner, everybody that holds a license,
24 that is one of the rules and regulations is
25 that you are responsible for keeping up with

1 the laws, and one -- and the laws covered
2 therein.

3 THE WITNESS: Yeah, I -- I -- I do agree
4 that my -- the -- the greatest knowledge I've
5 had pertaining to the rules and regulations are
6 make sure you renew and make sure the shop is
7 clean.

8 MS. FORD: Okay.

9 THE WITNESS: As far as if I don't get any
10 correspondence -- as far as an address --

11 MS. FORD: Uh-huh.

12 THE WITNESS: -- I knew that the salon
13 address was on file.

14 MS. FORD: Uh-huh.

15 THE WITNESS: So I never thought to go
16 back and say -- because, to my knowledge, what
17 I didn't receive, I didn't know that it came.

18 MS. FORD: Okay.

19 THE WITNESS: So --

20 MS. FORD: But whether -- whether --
21 whether or not you received the payment
22 arrangements as they were set out --

23 THE WITNESS: Uh-huh.

24 MS. FORD: -- you knew and you willingly
25 signed and said, yes, I agree that I'm going to

1 pay this \$1,275. At any time after that did
2 you contact the cosmetology section yourself
3 and say, hey, I haven't got my payment
4 arrangements yet?

5 THE WITNESS: Well, no, that's because
6 that same day I put in writing, because I
7 wasn't told where those charges came from.

8 MS. FORD: Uh-huh.

9 THE WITNESS: I didn't have a violation.

10 MS. FORD: But you agreed, whether or not
11 you -- you got anything, you agreed to pay it
12 and then that means you're accepting
13 responsibility for it. That's what you're
14 saying, when you agree to pay a -- a -- a fine
15 or a fee.

16 THE WITNESS: Yeah.

17 MS. FORD: I'm not going to accept -- I'm
18 not going to go sign to pay your bill.

19 THE WITNESS: Well, I -- but you -- that
20 was the next day after Ms. Pat came.

21 MS. FORD: Uh-huh.

22 THE WITNESS: And when she told me that
23 charge, I --

24 MS. FORD: Uh-huh.

25 THE WITNESS: -- I knew -- was more

1 panicked when I got there.

2 MS. FORD: Uh-huh, right.

3 THE WITNESS: And the only thing that I
4 was told was you're not going to be able to
5 renew unless you do this, but you put in
6 writing what your dispute is. I never got
7 anything back, as far as, I -- I didn't have
8 any knowledge of being charged per day.

9 MS. FORD: Well, would you say that it's
10 your responsibility to make sure that the
11 section has a good mailing address for you?
12 Whose responsibility would it be?

13 THE WITNESS: If -- if I can't be reached
14 at my salon I would, if --

15 MS. FORD: Okay. And you know by your own
16 testimony here today that you have issues
17 receiving mail at your place of employment.
18 Correct?

19 THE WITNESS: Right.

20 MS. FORD: Okay.

21 THE WITNESS: I've received some before.

22 MS. FORD: So whose -- so whose
23 responsibility is it to get a good mailing
24 address to the section?

25 THE WITNESS: It's mine.

1 MS. FORD: Okay. Thank you.

2 HEARING OFFICER: Okay. Further questions
3 from the --

4 THE WITNESS: And it --

5 HEARING OFFICER: -- the board members
6 from Ms. Surratt -- did --

7 THE WITNESS: No, I was just saying it --
8 it's my responsibility and I took on that
9 responsibility once I found out what I didn't
10 know immediately.

11 HEARING OFFICER: Okay. Further questions
12 from the board for Ms. Surratt?

13 MS. SULLIVAN: But you did know from -- at
14 least from 2012 to now, it's 2014, that you
15 owed this amount of money?

16 THE WITNESS: I --

17 MS. SULLIVAN: For whatever reason the
18 breakdown was, you knew that you owed --

19 THE WITNESS: No.

20 MS. SULLIVAN: -- nearly \$2,000 since
21 2012?

22 THE WITNESS: No. I figured that when I
23 put in --

24 MS. SULLIVAN: That you signed --

25 THE WITNESS: -- that dispute that it was

1 taken care of because I didn't know where they
2 came from. All I knew was that I hadn't had
3 any violations, I'm doing good. So when she
4 came and said, you've been assessed a thousand
5 dollar fine and I went and I needed to renew
6 right then because there was a violation, and I
7 put in that dispute, I figured that -- because
8 I didn't have any legit way or why I was
9 charged that, that it was taken care of. I've
10 never -- I've never heard that before,
11 pertaining to you're not operating, you're
12 being charged per day. So -- but as soon as I
13 was made aware -- because, like I said, I
14 renewed again.

15 MS. SULLIVAN: You signed this saying --

16 THE WITNESS: And I never received
17 anything.

18 MS. SULLIVAN: You signed a consent saying
19 you could renew again --

20 THE WITNESS: Right.

21 MS. SULLIVAN: -- without having to pay
22 all the money at that day, but you were saying
23 that you would pay it?

24 THE WITNESS: Right.

25 MS. SULLIVAN: Right.

1 THE WITNESS: Right.

2 MS. SULLIVAN: And you didn't. Right.

3 HEARING OFFICER: Go right ahead,

4 Ms. Trish.

5 MS. ANDERSON: Ms. Surratt?

6 THE WITNESS: Yeah.

7 MS. ANDERSON: I would like to ask, so you
8 knew the license was expired from 2008 to 2012,
9 you signed this letter on April 28, 2012, so
10 you could renew it, then that license was
11 renewed, and then after 2013 to '14 it expired
12 again. You have a master's degree, you stated
13 you're a woman of education. Why did you not
14 renew it the second time that it was found
15 in -- expired?

16 THE WITNESS: I renewed it in -- in 2012.

17 MS. ANDERSON: But it's not renewed now;
18 is that correct?

19 THE WITNESS: Yeah, it expired April of
20 this year. April 21st of this year.

21 MS. ANDERSON: And this is what month?

22 THE WITNESS: This is September.

23 MS. ANDERSON: So have you worked from
24 September to now with that expired license?

25 THE WITNESS: I called immediately and I

1 was told that I had been set up for a hearing
2 and that I could not renew my license until I
3 make it to the hearing and -- and that was the
4 July 21st date that I missed due to that
5 ticket.

6 MS. ANDERSON: And you -- and you do
7 understand that this committee can suspend your
8 license permanently for nonpayment of that?

9 THE WITNESS: Yes, I do understand.

10 MS. ANDERSON: We can revoke your license
11 for not paying this. You can't ignore this
12 forever, you do understand, you've got to take
13 action and do something about this?

14 THE WITNESS: Yes, ma'am. Yes, ma'am.

15 MS. ANDERSON: Because we've heard this
16 for a long time and it's gone in a circle.

17 THE WITNESS: (Nodding head up and down.)

18 MS. ANDERSON: We can continue to go in a
19 circle but we -- you know, we can't do it for
20 you. You understand that, right?

21 THE WITNESS: Yes, ma'am.

22 MS. ANDERSON: Okay. Thank you.

23 HEARING OFFICER: Further questions from
24 the board?

25 Okay. Very well. Thank you very much.

1 Okay. Ms. Surratt, anything else? Any
2 other witnesses? I'm going to give you a
3 chance to make a closing statement and
4 Ms. Pitman will have the same opportunity
5 before the board deliberates.

6 MS. SURRATT: Okay.

7 HEARING OFFICER: Okay, Ms. Pitman, go
8 right ahead.

9 MS. PITMAN: Okay. Some closing. We're
10 here today on the \$400 worth of violations that
11 they have very nicely laid out for you on
12 Page 16 of your packet. On 10/29/2013 the
13 license was not posted and floors and mats were
14 not clean and in good repair. 5/9/2014 her
15 salon license was not current, it was not
16 posted in the reception area, that's a total of
17 \$400 worth of fines. Ms. Surratt herself has
18 said that she doesn't contest those fines, she
19 contests the \$1,200 and the \$700 that we're not
20 here to ask for today. So it doesn't seem to
21 me that we really have an issue on the table.
22 She's agreed that those fines are owed, she's
23 disputing the ones that we're not here asking
24 for, we can talk about that at the end of this
25 hearing, we can go over what the rules and

1 regulations say, we can tell you where you can
2 find a copy, but as far as I can tell we don't
3 really have an issue today. She's agreed that
4 she owes \$400 and that's what we're asking for.

5 HEARING OFFICER: Okay. Thank you,
6 Ms. Pitman.

7 Ms. Surratt, go right ahead and tell the
8 board anything you want them to consider or
9 think about before they deliberate for a
10 decision.

11 MS. SURRATT: Well, I would just like for
12 you guys to consider that I don't contest owing
13 for the -- the three violations. I assure that
14 on time, in timely payments, if I were able
15 to -- with the opportunities that set me here
16 before you guys to make those payments, that
17 they will be made and on time. I just would
18 like for you guys to consider for me to be able
19 to operate. I'm the only one in the salon, I
20 do operate a -- a clean, user friendly
21 establishment. If I'm able to operate while
22 paying this off I can make, you know, the
23 payments, and that's -- that's my biggest
24 concern is being able to work to pay.

25 HEARING OFFICER: Okay. Thank you very

1 much.

2 At this time we'll close the record and
3 let the board recess for deliberations. Once
4 the board reaches its decision then we will go
5 back on the record.

6 (WHEREUPON, the Committee retired to
7 deliberate, off the record, from 2:14 p.m. to
8 2:19 p.m., and returned with the following
9 question.)

10 HEARING OFFICER: We'll go back on the
11 record. Restate your question and we'll give
12 Ms. Pitman a chance to -- to answer it and --
13 and to give y'all some explanation, and if
14 anybody else has any questions for Ms. Pitman
15 about what we are here for today and what this
16 Order and Notice of Hearing is about, then now
17 would be a good time to ask it. Go ahead,
18 Wendy, and state your question.

19 MS. SULLIVAN: Okay. Question, we -- she
20 did not -- she was unable to attend last time
21 so -- but we proceeded without her and we came
22 up with what is on Page 2, basically, or --
23 yes. Yeah. But now that's -- I'm -- I'm
24 understanding that to be basically irrelevant
25 and we're just looking at a \$400 fine. Why --

1 MS. PITMAN: Well --

2 MS. SULLIVAN: Why is that?

3 MS. PITMAN: Well, okay. It's not -- you
4 were just looking at a \$400 fine last time
5 because the 1,973 was imposed by an order
6 previously. You can't decide that 1,973.

7 MS. SULLIVAN: So why were we allowing it?

8 MS. PITMAN: I don't think you were. All
9 you basically said is that she had to pay it.
10 You didn't decide that she owed it or anything
11 of that nature, you just said, pay it last
12 time. All we can -- all you can decide today
13 is whether or not she did the things on
14 10/29 and 5/9/2014.

15 MS. SULLIVAN: So, basically this needs to
16 say, whatever we decide, like whether it pay
17 the 400 and move on?

18 MS. PITMAN: Yeah.

19 MS. SULLIVAN: I mean, to get this case
20 over?

21 MS. ANDERSON: We can do the same order,
22 correct, that we did last time? We can do the
23 same motion; is that correct? The motion --
24 there is nothing wrong with the motion?

25 HEARING OFFICER: Y'all have to look at

1 what's in the Order and Notice of Hearing for
2 today's matter, and what's listed is on Page 16
3 and what was actually included in the
4 documentation. So y'all read that, it's at, I
5 guess, Page 12, 13, am I right, am I looking at
6 the right one?

7 MS. PITMAN: It's the first page of the
8 one for today, and it talks about the facts
9 that you're asked to find are the 10/29,
10 5/9/14 hearing, and that she has a past due
11 balance of \$1,973, the same as it was last
12 time.

13 MS. SULLIVAN: Okay.

14 MS. PITMAN: She's saying she didn't know
15 about the 1,973, we can go back through all of
16 that if you want to.

17 MS. SULLIVAN: But that's -- I mean --

18 MS. PITMAN: But we -- that's already
19 been -- that issue of whether or not it was a
20 date --

21 MS. PECK: That's already been
22 established?

23 MS. PITMAN: Yeah.

24 MS. PECK: That's already been ordered,
25 she's already been ordered to pay that.

1 MS. ANDERSON: So I'm going to ask my
2 question again. So at this time --

3 MS. PITMAN: You can do what you did last
4 time. It's exactly -- it's not like it hasn't
5 happened, but it's -- she told us why she
6 couldn't come, it was a legitimate reason --

7 MS. SULLIVAN: Right.

8 MS. PITMAN: -- so she wanted to have the
9 chance to speak to you.

10 MS. SULLIVAN: But what we said last time
11 to be resaid today could be a motion made again
12 today to --

13 MS. PITMAN: It looks like it can be, yes.

14 MS. SULLIVAN: Okay. I think that was my
15 question and I just couldn't get it out.

16 HEARING OFFICER: Okay. Further questions
17 before we go off the record again?

18 MS. PECK: No.

19 HEARING OFFICER: Okay. Very well, we're
20 going to close the record again for
21 deliberations.

22 (WHEREUPON, the Committee retired to
23 deliberate, off the record, from 2:22 p.m. to
24 2:41 p.m., and returned with the following
25 question.)

1 HEARING OFFICER: Okay.

2 MS. FORD: I have a legal question.

3 HEARING OFFICER: Go right ahead, Ms. Kim.

4 MS. FORD: Ms. Elizabeth?

5 MS. PITMAN: Uh-huh.

6 MS. FORD: In this matter, the -- the
7 previous ruling, will it stand by itself
8 whether or not we make a decision on that
9 today?

10 MS. PITMAN: Yes.

11 MS. FORD: Okay.

12 MS. PITMAN: The previous ruling stands.

13 MS. FORD: Regardless?

14 MS. PITMAN: Unless Ms. Surratt decides to
15 do something about it, it stands.

16 MS. FORD: Okay.

17 HEARING OFFICER: And what -- what --
18 just -- just to make sure we're clear, what
19 previous ruling?

20 MS. PITMAN: The 1,973.

21 HEARING OFFICER: The 1,973, okay, I just
22 want to be sure we're all clear.

23 MS. ANDERSON: The next question about
24 that previous ruling is, is the Department of
25 Health just going to sit on it and let her

1 continue to work as long as she renews, the --
2 that -- this \$400 will allow her to renew; is
3 that correct? Or does she still owe the 1,973
4 to renew? That's the question. Because we're
5 spinning our wheels.

6 HEARING OFFICER: I can't -- I have no
7 idea.

8 MS. SURRATT: We're on the record?

9 HEARING OFFICER: Yes. Hold on just a
10 second, let me -- let me see if Ms. Elizabeth
11 Pitman will address Trish's --

12 MS. ANDERSON: Okay. So if she pays the
13 \$400, she still has 1,973 remaining to pay,
14 will that allow her to have a license, work to
15 pay off the 1,973? Because otherwise we're
16 doing -- we're spinning.

17 MS. PITMAN: Yes, if she pays 400 and you
18 don't suspend or revoke her license, she will
19 be allowed to renew and pay off the remaining
20 balance of 1,937.

21 MR. TABB: Okay. Now --

22 MS. SULLIVAN: Oh, god.

23 MR. TABB: And the only reason I'm saying
24 this is because -- okay --

25 HEARING OFFICER: Do you have a question

1 that we need to get on the record or is this
2 something we need to talk about?

3 MR. TABB: Yes, we need --

4 HEARING OFFICER: I'm just trying to make
5 sure where we are.

6 MR. TABB: Okay.

7 MS. PITMAN: And Ms. Surratt wanted to say
8 something.

9 HEARING OFFICER: And then I'll let -- Ms.
10 Surratt, I -- I will let you ask or say
11 something in a little bit.

12 MR. TABB: The last --

13 HEARING OFFICER: Go right ahead, Mr.
14 Adrian.

15 MR. TABB: -- the last hearing when we as
16 a committee decided this 2,373 and the
17 revocation of her establishment and her
18 cosmetology license. That was the order that
19 was made. Okay, so --

20 MS. FORD: It's not the 23, it's the
21 1,973.

22 HEARING OFFICER: Okay. Are you talking
23 about the order from --

24 MS. PECK: All --

25 HEARING OFFICER: Hold on, hold on just a

1 minute.

2 MR. TABB: The 1,973 plus the 400 that
3 would have -- that's in question today.
4 Because we discussed what's in question today
5 in the hearing on the 25th.

6 MS. FORD: We did.

7 HEARING OFFICER: Well, let me -- I think
8 I can clarify that for you; and, Ms. Pitman, if
9 I have a wrong interpretation here, you let me
10 know. My understanding is, is that since
11 Ms. Surratt was not available to be here --

12 MR. TABB: Right.

13 HEARING OFFICER: -- in July --

14 MR. TABB: Uh-huh.

15 HEARING OFFICER: -- this hearing is
16 basically kind of a redo from that July
17 hearing.

18 MR. TABB: Right.

19 HEARING OFFICER: So that order doesn't --
20 doesn't really stand.

21 MR. TABB: Well, that's what I was trying
22 to ask. That's what I was trying to ask. So
23 if this order does not stand, then we're
24 basically going all the way over again?

25 MS. PECK: Completely over.

1 MR. TABB: And we're completely redoing
2 this, but it was also said that this order will
3 stand?

4 MS. PITMAN: It can.

5 MR. TABB: It can.

6 MS. PITMAN: Not that it will.

7 MS. SULLIVAN: But --

8 MR. TABB: Okay. I got you.

9 MS. PITMAN: She wanted -- she wanted a
10 hearing where she could be present, so we have
11 to re-present all of our evidence, she gets the
12 opportunity to present all of hers. If you
13 still agree with what you did back on
14 July 21st, after hearing everything she's
15 added --

16 MR. TABB: Uh-huh.

17 MS. PITMAN: -- then you can keep it the
18 same.

19 MR. TABB: Okay.

20 MS. PITMAN: But it doesn't necessarily
21 have to stay the same.

22 MR. TABB: Okay.

23 HEARING OFFICER: Okay. Wendy?

24 MS. SULLIVAN: And, Adrian, with that, we
25 have to remember that, you know, basically when

1 we made our decision too last time was, she
2 didn't show --

3 MR. TABB: Exactly.

4 MS. SULLIVAN: That, you know, there was
5 extenuating circumstances to why she did not
6 show.

7 MR. TABB: Uh-huh.

8 MS. SULLIVAN: But we're just looking at
9 there is a history, she still couldn't bother
10 to show up, so we hammered her.

11 MR. TABB: Right.

12 MS. SULLIVAN: But since then she has made
13 contact and said this is why I was not there,
14 it was extenuating circumstances.

15 MR. TABB: Uh-huh.

16 MS. SULLIVAN: So, I mean, in lieu of
17 that, we definitely have room to work if we so
18 choose.

19 MR. TABB: Okay.

20 HEARING OFFICER: Okay. Ms. Surratt, did
21 you have a question or something that you want
22 on the record? Because if not I'm going to
23 close it back up and let them go back into
24 deliberations and hopefully reach a decision?

25 MS. SURRATT: Well, yeah, just for

1 whatever it's worth if -- if -- if there
2 were -- was no interference with me being fully
3 aware to absolutely everything in a normal type
4 of -- of correspondence going back and forth,
5 then I would totally understand the hammering,
6 but for whatever it's worth, I could
7 definitely -- that that's why my whole stance
8 was making you guys aware that it's not me
9 totally disregarding you all's orders, but I
10 would make payment if -- none of them would be
11 late, if I may -- I would put extra on to
12 whatever I'm charged.

13 HEARING OFFICER: Okay. I don't want to
14 get into too much --

15 MS. SURRATT: Yeah.

16 HEARING OFFICER: -- because we're --
17 we're kind of in this funny phase of the record
18 at this point.

19 MS. SURRATT: Oh, okay.

20 HEARING OFFICER: Okay. At this time
21 we're going to go back off the record and let
22 y'all deliberate some more.

23 (WHEREUPON, the Committee retired to
24 deliberate, off the record, from 2:46 p.m. to
25 2:51 p.m., and returned with the following

1 motion.)

2 HEARING OFFICER: Okay. Very good. At
3 this time let's go back on the record for the
4 board's decision.

5 MS. ANDERSON: Okay. At this time we have
6 a motion for this action before us and Wendy
7 will get that motion.

8 MS. SULLIVAN: In the matter of the
9 Arkansas Department of Health versus Trinia's
10 Diamond Hair Care, we have -- make a motion
11 that Trinia has to pay the \$400 fine in full
12 today, and that is of the salon license being
13 posted in the reception area, floors, mats are
14 not clean in good repair, \$50, salon license
15 current, \$250, and the salon license posted in
16 reception area as 50.

17 MS. ANDERSON: To renew her license.

18 MS. SULLIVAN: And that -- and to renew
19 her license --

20 MS. ANDERSON: Be able to.

21 MS. SULLIVAN: -- and to be able to renew
22 her license, plus payment arrangements of the
23 original 19 -- \$1,973, payment arrangements
24 must be made on that within 30 days and payment
25 be made within 30 days. A missed payment, she

1 will be suspended and come before us.

2 HEARING OFFICER: Everybody understand the
3 motion? Okay.

4 MS. ANDERSON: Okay. Do I have a second,
5 please?

6 MR. TABB: I second.

7 MS. ANDERSON: Adrian has seconded. We
8 will take a vote and get this done. Adrian?

9 MR. TABB: Aye.

10 MS. PECK: Aye.

11 MS. FORD: Opposed.

12 MS. SULLIVAN: Aye.

13 MS. ANDERSON: The motion passes.

14 HEARING OFFICER: Please let the record
15 reflect the decision of the committee was three
16 to one, please reduce the decision of the
17 committee to writing and make or attempt
18 service upon the respondent; an appeal of this
19 decision may be taken under the rules of the
20 Department of Health or the Administrative
21 Procedures Act. And if there is nothing
22 further, this record is closed and made
23 complete.

24 (WHEREUPON, at 2:53 p.m., the
25 above-entitled proceedings were concluded.)

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BEFORE THE COSMETOLOGY TECHNICAL ADVISORY
COMMITTEE (CTAC)

IN THE MATTER OF:

ARKANSAS DEPARTMENT OF HEALTH PETITIONER

v.

SEARCY BEAUTY COLLEGE RESPONDENT

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HEARING OFFICER: Okay. Are we ready to
get started? Kelli, you're ready?

MS. KERSEY: I'm ready.

HEARING OFFICER: Ms. Pitman, and you're
ready?

MS. PITMAN: I'm ready.

HEARING OFFICER: Okay. Mr. Roberts?

MR. ROBERTS: Yes, ma'am.

HEARING OFFICER: Very well. At this time
we'll go on the record.

My name is Kendra Akin Jones and I'm the
Hearing Officer today in the matter of the
Arkansas Department of Health versus Searcy
Beauty College to be heard before the
Cosmetology Technical Advisory Committee, today
is Monday, September 15, 2014. Would the
respondent please identify yourself for the

1 record?

2 MR. ROBERTS: Mike Roberts.

3 HEARING OFFICER: And, Mr. Roberts, are
4 you represented by counsel today?

5 MR. ROBERTS: No, ma'am.

6 HEARING OFFICER: Okay. And you received
7 a copy of the Order and Notice of Hearing for
8 today's matter?

9 MR. ROBERTS: Yes, ma'am.

10 HEARING OFFICER: And you are ready to
11 proceed?

12 MR. ROBERTS: Yes, ma'am.

13 HEARING OFFICER: Okay, Ms. Pitman, please
14 identify yourself.

15 MS. PITMAN: My name is Elizabeth Pitman
16 and I am the Deputy General Counsel for the
17 Department of Health.

18 HEARING OFFICER: Very well. For the
19 benefit of anyone present today who may not
20 have appeared in an administrative hearing, the
21 board will base its decision solely on the
22 evidence presented here today. So,
23 Mr. Roberts, anything you've got in your
24 possession you want them to consider, you need
25 to be sure to be sure and give them copies of

1 and --

2 MR. ROBERTS: Okay.

3 HEARING OFFICER: -- and we'll introduce
4 those into evidence shortly.

5 MR. ROBERTS: Yes, ma'am.

6 HEARING OFFICER: This hearing is being
7 held under the Administrative Procedures Act,
8 so the strict rules of evidence do not apply.
9 There will be some latitude in introducing
10 evidence to provide a fair hearing and provide
11 the board with adequate information to make a
12 decision. This hearing is open to the public,
13 and that does include the board's recess for
14 deliberations, and that is under the Freedom of
15 Information Act. So, at this time, for those
16 people who are going to be witnesses in today's
17 matter, if you would please raise your right
18 hand.

19 (WHEREUPON, the witnesses were sworn by
20 the Hearing Officer.)

21 HEARING OFFICER: Very well. Okay.
22 Ms. Pitman, preliminary matters?

23 MS. PITMAN: Yes, ma'am. There is a
24 packet in the binder, I think, it's just the
25 Order and Notice of Hearing, two pages.

1 HEARING OFFICER: Three.

2 MS. PITMAN: Three pages, I would ask that
3 that be admitted. And then also recently
4 passed out was the complaint that we received
5 on Searcy Beauty College that started this
6 entire investigation, eight pages.

7 HEARING OFFICER: Okay. So let's do the
8 Order and Notice of Hearing and information
9 that is contained in the booklet as Board's
10 Exhibit No. 1. And then the eight pages that
11 have been handed out that starts with an email
12 at the top, says Kenneth Roberts, that will be
13 Board's Exhibit No. 2.

14 Mr. Roberts, you -- have you seen all of
15 this information?

16 MR. ROBERTS: Yes, ma'am.

17 HEARING OFFICER: Okay. Do you have any
18 objections to any of this?

19 MR. ROBERTS: No, ma'am.

20 HEARING OFFICER: Okay. Ms. Pitman?

21 (WHEREUPON, DHS - Cosmetology Section
22 Exhibits Nos. 1, 3 pages; and 2, 8 pages, were
23 received in evidence.)

24 MS. PITMAN: There is also a spreadsheet
25 that is the attendance but not on time card, so

1 that appears to be under the amount of hours
2 that weren't given to the students as not
3 reported.

4 HEARING OFFICER: Okay. So this big
5 spreadsheet, Mr. Roberts, do you have any
6 objection to this information?

7 MR. ROBERTS: No, ma'am.

8 HEARING OFFICER: Okay. That will be so
9 admitted as the Board's Exhibit No. 3.

10 (WHEREUPON, DHS - Cosmetology Section
11 Exhibit No. 3, 19 pages, was received in
12 evidence.)

13 MS. PITMAN: And then the last thing, I
14 believe, is the last spreadsheet, and I might
15 have those backwards. I think this is the time
16 that was overreported.

17 MS. KERSEY: Yes, one was under, one was
18 over.

19 HEARING OFFICER: Okay. So, Mr. Roberts,
20 are you -- are you okay with this second set?

21 MR. ROBERTS: Yes, ma'am.

22 HEARING OFFICER: Okay. Those will be
23 Board's Exhibit No. 4, just to clarify for
24 everybody, and to note for the record, Board's
25 Exhibit No. 3, that spreadsheet has some red

1 and yellow colorings on it and it looks like
2 highlights, and then Board's Exhibit No. 4
3 appears to not have the highlighting, so just
4 so we can kind of differentiate somehow.

5 (WHEREUPON, DHS - Cosmetology Section
6 Exhibit No. 4, 30 pages, was received in
7 evidence.)

8 HEARING OFFICER: Okay. Ms. Pitman,
9 anything else?

10 MS. PITMAN: Just that we take official
11 notice of the Rules and Regulations for
12 Cosmetology and the Cosmetology Act.

13 HEARING OFFICER: Very well. Those will
14 be so noted.

15 Mr. Roberts, anything you have you want
16 the board to consider today?

17 MR. ROBERTS: Yes, ma'am. I have four
18 documents here. One references a new time and
19 attendance system that we've gone to; one
20 references the transition of the employees that
21 we've had, terminating the ones that were here
22 last year; and the third is a printout of our
23 new time and attendance system; and fourth is
24 some time cards from December.

25 HEARING OFFICER: Okay. Do you have

1 copies of those or do we need to have some
2 copies made?

3 MR. ROBERTS: No, I made copies. These
4 are your copies.

5 HEARING OFFICER: Let's -- and what was --
6 just so I can get a list made here, what was
7 the first one, Mr. Roberts?

8 MR. ROBERTS: The first one is a letter
9 from a -- our new time and attendance system
10 that we've gone to recently.

11 HEARING OFFICER: Okay. And then No. 2
12 was the employee transition?

13 MR. ROBERTS: Yes, ma'am.

14 HEARING OFFICER: And No. 3 was?

15 MR. ROBERTS: Was a detail report from our
16 new time clock system.

17 HEARING OFFICER: And No. 4?

18 MR. ROBERTS: Is time cards from December,
19 December 10, to be exact.

20 HEARING OFFICER: Ms. Pitman, do you have
21 any objections to any of this information?

22 MS. PITMAN: I don't know because I
23 haven't seen them.

24 HEARING OFFICER: Okay. Well, let's --

25 MS. PITMAN: I don't think I do.

1 HEARING OFFICER: In order to keep us
2 moving along, Mr. Roberts, I'm going to wait
3 until we get some copies or if you have a copy
4 that Ms. Pitman can look at, and once she has a
5 chance to take a look at those briefly, then
6 I'll -- I'll go ahead and admit them, more than
7 likely, so -- but I'll let her take a look
8 first.

9 MS. ANDERSON: May we have a moment to
10 read what you've given us? Because we have not
11 seen this prior to this.

12 HEARING OFFICER: Okay.

13 MS. ANDERSON: Is that okay?

14 HEARING OFFICER: Yes, that's fine. We'll
15 give y'all a minute and that way Ms. Pitman
16 will have a minute as well to look at those;
17 so --

18 MS. PITMAN: And these are in order, 1, 2,
19 3, 4? Okay. Yep.

20 HEARING OFFICER: We'll go ahead and go
21 off the record for just a moment while
22 everybody takes a look.

23 (WHEREUPON, a brief recess was held.)

24 (Ms. Peck left the room.)

25 HEARING OFFICER: Okay. And are y'all

1 about ready to go on? Okay.

2 MR. ROBERTS: Ms. Pitman, those are my
3 originals.

4 HEARING OFFICER: Okay. At this time
5 we're going to go back on the record.

6 Ms. Pitman, do you have any objection to
7 Mr. Roberts' information that he's presented,
8 Exhibits 1 through 4?

9 MS. PITMAN: The only objection I have is
10 on No. 1, it's dated September 10, 2014, the
11 violation occurred before that, so I'm not sure
12 it's relevant.

13 HEARING OFFICER: Well, I'm going to go
14 ahead and admit them, but that will be so noted
15 for the record; however we're going to admit
16 the new time system, time and attendance system
17 as the College's Exhibit 1; the employee
18 transitions information as the College's
19 Exhibit 2; a detailed report from the new time
20 and attendance system as Exhibit 3; and time
21 cards for December as Exhibit 4.

22 (WHEREUPON, Searcy Beauty College Exhibits
23 Nos. 1, 3 pages; 2, 1 page; 3, 22 pages; and
24 4, 2 pages, were received in evidence.)

25 HEARING OFFICER: And I think we are

1 working on getting copies of all of those for
2 the board, it looks like at this point we've
3 got 1 and 2, so we'll get 3 and 4 for y'all in
4 just a little bit. But I'm going to go ahead
5 and proceed at this time with opening
6 statements.

7 Ms. Pitman.

8 MS. PITMAN: Okay. Just a very briefly
9 one, Ms. Jones. We are here today on a
10 complaint that was received back in February of
11 this year. It was a complaint regarding hours
12 for a student. Basically, the complaint was
13 that a lady had attended Searcy Beauty College
14 and that she had graduated without actually
15 completing all of her hours and was bragging
16 about it, it's in Exhibit No. 2. Ms. Kersey
17 then began an exhaustive investigation, which
18 she will go through and explain to you during
19 her testimony. She created the spreadsheets
20 that you -- you see here, she asked for Searcy
21 Beauty College to send in all of their time
22 cards, she went and reviewed all of those, it
23 took her several months to complete the
24 process, and she compiled these spreadsheets
25 indicating overage as students who were not

1 given enough hours who were underreported, and
2 then students who were given too many hours who
3 were overreported. Searcy was asked to explain
4 that, they were given the information,
5 Ms. Kersey will testify as to what their
6 explanation was given as. They were -- it was
7 not satisfactory, according to Ms. Kersey. She
8 will explain all of that as well. And we still
9 feel that students who attended their school
10 were either given too many hours where they
11 hadn't actually earned the credits that they
12 needed to become licensed cosmetologists, or
13 they were not given enough hours so that they
14 were not credited with the hours that they did
15 in fact earn towards becoming a cosmetologist.
16 Because this directly affects students who have
17 paid their money who were trying to earn their
18 license and start a livelihood, we brought them
19 to the hearing, and that's why we're here
20 today.

21 HEARING OFFICER: Okay. Thank you very
22 much.

23 Mr. Roberts, an opening statement?

24 MR. ROBERTS: I fully recognize the
25 magnitude of why I am here today, and while I

1 understand that this happened in the past and
2 prior to me joining the school on a full-time
3 basis, I know that I'm responsible for the
4 wrongdoing, since I'm the one here today. I
5 do, however, beyond a shadow of a doubt know
6 that this, along with other issues, have been
7 corrected since I've been there.

8 HEARING OFFICER: Okay. Thank you,
9 Mr. Roberts.

10 Ms. Pitman, call your first witness.

11 MS. PITMAN: Call Kelli Kersey.

12 WHEREUPON,

13 KELLI KERSEY,

14 having been called for examination, and having been first
15 duly sworn by the Hearing Officer, was examined and
16 testified, as follows:

17 THE WITNESS: Kelli Kersey, Arkansas
18 Department of Health, Cosmetology Section,
19 Section Chief.

20 DIRECT EXAMINATION

21 BY MS. PITMAN:

22 Q Okay. Ms. Kersey, I sort of talked about the
23 complaint that was received that's marked as Exhibit
24 No. 2. Will you please tell us a little bit more about
25 this?

1 A Okay. On April 29, Lavonne Lester and, I believe,
2 Ken went with her to investigate this complaint. Upon
3 investigating the complaint on the said student in the
4 complaint, we -- they brought her time cards back to me.
5 I examined all of her time cards, compared them to what
6 had been entered in CLIPS, which CLIPS, if any of you
7 don't know, is our software system, but the schools input
8 their own hours.

9 It was found that one week for sure -- that's the
10 first spreadsheet that you have. Okay. She is on the
11 very top of the one with the red line under it. I've got
12 it up here for y'all to see so it will be a little bit
13 easier for everybody to see. You see, she's the very
14 first one there, Amanda Miller. So I went through all of
15 her time cards and I had -- this is actually my second
16 spreadsheet that I did. The first one just had what was
17 on the time cards and I added them all up, and -- of what
18 they had added on each time card. Then I compared it to
19 CLIPS at the end -- I wish you could see that a little
20 bit better. Let's see if I minimized it, if you can.

21 Okay. So when we got hers and we realized that the
22 time -- you know, that she actually had 48 hours in CLIPS
23 that were not recorded on her time card, it kind of threw
24 up a red flag. So Chris and Ken went back out and
25 retrieved them, every one of their time cards from

1 June 2013 to December 2013 for every student, which was
2 129 students.

3 Okay. So this is -- I went to my first spreadsheet
4 and I did one spreadsheet for all the students that had
5 had too many hours inputted into CLIPS, which is what the
6 red number at the very end indicates. Then I did a
7 second spreadsheet for all the students who had not
8 gotten enough credit. And my third spreadsheet, which
9 y'all don't have because these hours are correct for
10 these students, there was only 21 students out of 129
11 students that their hours were actually correct.

12 So after that, when we found that the time cards did
13 not match CLIPS, we sent them the letter which you have,
14 which was the -- the first set of sheets that I gave
15 y'all after the complaint. Their response back was to
16 send me their attendance history reports.

17 I'm going to pass this around. We didn't make
18 copies of this because there was just so many of them.
19 This is the actual one that the complaint was on, I'm
20 going to show you her cards and her attendance history
21 report.

22 THE WITNESS: Is that okay? Can I do
23 that? Can we put that in? No?

24 HEARING OFFICER: We've got to have a copy
25 of it for the record.

1 THE WITNESS: Okay. We can do that.

2 HEARING OFFICER: I mean, if the board
3 members don't have a copy of it, then they will
4 have to, I guess, pass it around.

5 THE WITNESS: Okay. And then we can make
6 copies of it. I'm sorry. There was just so
7 many of them.

8 Okay. So when I --

9 HEARING OFFICER: Are you --

10 THE WITNESS: I'm sorry.

11 HEARING OFFICER: Ms. Pitman, are you
12 wanting to introduce these cards into evidence?
13 Or, I mean --

14 THE WITNESS: Just the one, remember we
15 talked about the -- the one that was actually
16 the complainant just for reference, just so
17 they could look at it.

18 MS. PITMAN: If it's just so they have a
19 reference of what you're doing, I don't know if
20 we need to admit it.

21 THE WITNESS: That's fine. I mean, is
22 that okay if they just look at it? He knows
23 what it is. He -- he has everything that I'm
24 showing them.

25 HEARING OFFICER: Okay.

1 THE WITNESS: Okay?

2 HEARING OFFICER: That's fine then. If we
3 need to admit it into evidence, y'all let me
4 know.

5 THE WITNESS: Okay. So they in return
6 sent me their attendance history report. So I
7 went through each one of those and, okay, the
8 first number on the spreadsheet is what's on
9 the time card in the little squares, see the 8,
10 asterisk 8, asterisk plus? The 8 is the --
11 what is on the time card, the second 8 is
12 what's on the attendance history report, and
13 the plus or the A is another sheet that I went
14 through, they sent me their theory attendance
15 where they checked the students in in the
16 morning, so if it's a plus they were there that
17 morning, if they weren't it was an A.

18 So I did this for every student. And if
19 you go all -- through all of them, there are
20 several discrepancies. There are some Sundays
21 on this very first particular student, she went
22 to school on two Sundays and three Mondays.
23 And then in December, there was a question in
24 December, because on the attendance history
25 report, it says that they are closed, but some

1 students had hours on that day.

2 So in conclusion, after I did that for all
3 the students, we then, it was time for a
4 hearing to bring it before you guys to see what
5 we need to do. Oh, I'm sorry, I want to
6 explain one more thing. If that -- if it's in
7 pink, if their name is in pink, they are
8 already licensed. So these students that are
9 in pink that have had too many hours credited
10 to them, they already have a license because
11 we -- there is no way for us to know, because
12 we just take what y'all give us, unless it
13 turns into an investigation.

14 So there was, I believe, let me see how
15 many students. I think it was 52. Sorry. It
16 was 56 students that had been given too much
17 credit hours. And then on Sheet 2, there were
18 51 students that weren't given enough credit.
19 And then, like I said, on the third sheet there
20 was only 21, which I, again, I didn't pay too
21 much attention to those, the 21, I didn't do
22 anything past the first spreadsheet, because
23 they weren't really in question. So that's
24 what you're looking at. And if you, if you see
25 an orange number, like on this student on this

1 Taylor Hicks, the 0 asterisk 8 question mark,
2 this was not reflected on the time card but it
3 was on the attendance history report.

4 If you -- if you start comparing the
5 numbers that were to the letter that I gave
6 Searcy, I had talked to Michael and he
7 questioned it. If it was on the attendance
8 history report but I had not recorded it on the
9 time card, I went back and double checked
10 myself on the time cards, and there was
11 multiple times where it wasn't added on the
12 time card. Do y'all understand what I'm
13 saying? Like the dates, the dates were there
14 but they had not added it. So I would add
15 those up and I would give them credit for that.

16 So, anyway, I think that's all I have,
17 Elizabeth.

18 BY MS. PITMAN:

19 Q Okay. Just so I'm clear on what you did.

20 A Okay.

21 Q First you just got the -- the time cards from
22 Ms. Miller because she was the one that we had a
23 complaint on?

24 A Correct.

25 Q Reviewing those, it looks like she's on the

1 spreadsheet No. 3 as having been overreported for 48
2 hours?

3 A Correct.

4 Q Okay. So you could substantiate the complaint that
5 she had earned hours and received her license or she had
6 been given hours and received her license even though she
7 had not earned them?

8 A Correct.

9 Q Okay. After you discovered that, you decided to go
10 back through and audit every student for the past year?

11 A It was the past six months.

12 Q Past six months?

13 A So it was June to December, June through December.

14 Q You did say that. I'm sorry.

15 A Yeah, that's okay.

16 Q Past six months. And you had two spreadsheets that
17 reflect what you did, again, you took the time cards,
18 compared them to what had been put into CLIPS and what
19 was on their attendance report?

20 A Correct.

21 Q How -- you told me how many students had received an
22 overage, too many hours. How many hours were credited
23 that were not earned?

24 A Let me go down here. Okay. My deal is, he said
25 my -- my numbers weren't adding up right, which I didn't

1 have that, but it's 1,360.

2 Q 1,360?

3 A Uh-huh.

4 Q So how did that -- how was it added up?

5 A I just did that call, you know, I did sum and --

6 Q Okay.

7 A Yeah.

8 Q So the computer added it up?

9 A Yeah. Yeah.

10 Q Okay. And you said that anybody in pink here was

11 licensed, even though they had hours reported that they

12 had not earned?

13 A Correct.

14 Q Do you know how many people were licensed with hours

15 that they had not earned?

16 A I think it was 13, maybe. Yeah, it was 13.

17 Q Thirteen?

18 A Uh-huh.

19 Q And looking at the second spreadsheet, how many

20 hours were under reported?

21 A 616.

22 Q 616?

23 A Uh-huh.

24 Q Okay. Thank you.

25 A Uh-huh.

1 Q When you asked Searcy -- you told them what you had
2 found and asked them for justification, what did they
3 send back?

4 A They sent the attendance history report.

5 Q Okay. Did they offer any explanation for why there
6 were discrepancies?

7 A No. They just -- they just sent the reports back
8 for me to compare.

9 Q And then you used this and compared it to what you
10 already have and that's where those orange numbers come
11 in?

12 A Correct.

13 Q Okay. And then, Ms. Kersey, there is an Exhibit 4,
14 which is a time card and a note out beside it. Would you
15 please explain to us what this is?

16 Well, this is actually Searcy's Beauty College
17 exhibit. Never mind.

18 A Okay.

19 Q Forget that.

20 A Okay. Thanks.

21 Q I'm confusing my exhibits.

22 Okay. The only other question I have for you,
23 Ms. Kersey, at this time is what is the recommendation
24 today?

25 A I'm not sure we discussed that, Elizabeth. I'm

1 sorry.

2 Q No, that's okay. Do you think that the students who
3 were under reported should be given hours?

4 A Absolutely.

5 Q Do you think the hours for the students that are
6 still in school should be corrected?

7 A Yes.

8 Q Okay. What about the students that have are already
9 graduated and gotten a license?

10 A I don't think there is anything we can do about
11 that.

12 Q Okay.

13 A Yeah.

14 Q Do you have any penalty or do you think there should
15 be a penalty imposed against Searcy Beauty College?

16 A Yes. I believe it should be what it was last time
17 or more.

18 Q What was it last time?

19 A It was \$1,000 last time.

20 Q Okay. Was that for each student or was that for --

21 A That was for one student.

22 Q Okay. Just for one student?

23 A Uh-huh.

24 Q Okay. And then, Ms. Kersey, the only other question
25 I have is what rule has been violated?

1 A The students -- I'm not sure exactly what the rule
2 number is --

3 Q That's okay.

4 A -- but not getting the hours that are actual hours,
5 the students, and they have to report the hours correctly
6 to the month -- to the section each month.

7 Q I think in the letter that was sent to Searcy Beauty
8 College we do reference the rule.

9 A Yeah. We do. Sorry.

10 Q That's okay. I just want to make sure we have it on
11 the record.

12 A 7.17.

13 Q 7.17?

14 A Uh-huh.

15 Q And what rule is that?

16 A The monthly hour -- the monthly report shall reflect
17 the number of hours acquired in school during the month
18 and the accumulated hours during the current enrollment.

19 Q Okay. Then under Part 2 --

20 A Uh-huh.

21 Q -- what does it say?

22 A It says, the Cosmetology Section will notify the
23 school when an error has been made on the monthly report.
24 Upon receiving this notification, the school owner or
25 instructor is instructed to check their records and

1 appraise the cosmetology section office of the
2 corrections made with the week.

3 Q Okay. So we notified them of the errors in this
4 letter?

5 A Uh-huh.

6 Q To -- and they sent us back the report. Did they
7 ever notify you of any corrections made?

8 A No.

9 MS. PITMAN: No other questions.

10 HEARING OFFICER: Mr. Roberts, questions
11 for Ms. Kersey?

12 MR. ROBERTS: Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MR. ROBERTS:

15 Q Just out of curiosity, who was it that you dealt
16 with at Searcy Beauty College? Do you recall?

17 A Let me see. It looks like Sharon signed the
18 inspection sheet for that day.

19 Q Okay. Okay. And she's one of the ones that is
20 terminated because of this issue.

21 A Oh, okay.

22 Q Just for what it's worth.

23 A Yeah.

24 Q And can we go to the top of the spreadsheet, please,
25 that has Amanda Miller on it? And only because I love

1 numbers. If we look at her time, and not disputing that
2 this is a gross overstatement or understatement of ours.
3 But if we look at her time on the total on the far
4 right-hand side, we see that her time card total, 158.5,
5 and then the CLIPS total 158.5, yet there is an
6 over/under of 8.

7 A Let's see.

8 Q So her total over/under should really only be 40?

9 A 40. That's probably one of the corrections that I
10 had.

11 Q Okay. And then if we go to Nicole Vasquez, she's
12 number --

13 A What number is she?

14 Q She's No. 5. I'm sorry.

15 A Okay.

16 Q If we go over to the total. 90.57, less 90.25 is
17 not 90.25.

18 A Right.

19 Q So -- and there are several of these throughout,
20 but, again, I'm not disputing --

21 A Right.

22 Q -- the gross overstatement, but I just wanted to
23 make sure that at least we had it under a thousand.

24 And then on a couple of the students, is it
25 possible, and I apologize, I'm not familiar with how

1 CLIPS goes and how we enter the time, but is it possible,
2 say, on Caitlin Herman, who is the -- who is No. 1 --

3 A On? Is she No. --

4 Q On that same sheet. Yes, ma'am.

5 A Okay. Oh, on this sheet?

6 Q Yes, ma'am.

7 A Oh, okay.

8 Q Caitlin Herman, the 63 hours that we put in August,
9 could that have been us catching up for June when we
10 failed to put the hours in?

11 A I would agree with that.

12 Q Okay.

13 A Yeah.

14 MR. ROBERTS: I don't have any further
15 questions. Thank you.

16 HEARING OFFICER: Committee members,
17 questions for Ms. Kersey?

18 MS. ANDERSON: Okay. I need to ask a
19 couple of questions.

20 So we had 56 students with too many hours;
21 is that correct?

22 THE WITNESS: Yes.

23 MS. ANDERSON: We had 51 students with not
24 enough hours?

25 THE WITNESS: Uh-huh.

1 MS. ANDERSON: And then we had 21 students
2 who were correct?

3 THE WITNESS: Right.

4 MS. ANDERSON: Okay. And that still
5 includes the students that you just made
6 corrections to or -- so he still had something
7 else going on that was within the six-month
8 period; is that correct?

9 THE WITNESS: Yes.

10 MS. ANDERSON: Okay.

11 HEARING OFFICER: Further questions from
12 committee members?

13 MS. ANDERSON: Previous penalty,
14 Ms. Kersey, was \$1,000 per student? They had
15 one student that they were penalized for
16 previously?

17 THE WITNESS: Uh-huh. I believe so.

18 MS. ANDERSON: But this kind of reporting
19 wasn't done, right? You didn't look at time
20 cards and --

21 THE WITNESS: No. It was kind of
22 different. It was different last time.

23 MS. ANDERSON: Okay. Thank you.

24 HEARING OFFICER: Further questions from
25 the committee of Ms. Kersey?

1 Okay. Any -- anything on redirect,
2 Ms. Pitman?

3 REDIRECT EXAMINATION

4 BY MS. PITMAN:

5 Q I, just one thing, on Ms. Miller, Ms. Kersey, on her
6 numbers?

7 A Uh-huh.

8 Q That appears to be November where you had the eight
9 but the numbers match over there?

10 A Uh-huh.

11 Q There is also, under that day, somewhere in the
12 middle of that column, one of those, I think it's an
13 orange number, I can't tell, is that one of those orange
14 numbers you mentioned?

15 A Yes.

16 Q So what is that?

17 A The orange number?

18 Q Uh-huh.

19 A It wasn't -- it's not on the time card but it was on
20 the attendance history report.

21 Q Okay. And this could be wrong, this could just be
22 an error, so please just tell us, but when you got the
23 attendance report, did you go back and change the columns
24 on the far side of the --

25 A I tried to remember to do that but, you know,

1 when -- when I'm doing this over and over, I -- I might
2 have missed that. That's probably where that added that,
3 that eight in there.

4 Q Okay. So that's -- that could be why that error was
5 in there?

6 A Right.

7 MS. PITMAN: Okay. That's all.

8 HEARING OFFICER: Mr. Roberts, anything in
9 a follow-up for Ms. Kersey?

10 MR. ROBERTS: No, ma'am.

11 HEARING OFFICER: Okay. I just wanted to
12 make sure everybody has -- has their questions
13 of Ms. Kersey --

14 MS. ANDERSON: I do have another question
15 for her. Okay. So these guys are open on
16 Sunday and Monday?

17 THE WITNESS: Uh-huh.

18 MS. ANDERSON: Previous to this, I did
19 look on the website, they are closed Sunday and
20 Monday and they are open on Tuesday through
21 Saturday. So are these specialty days that you
22 were aware about ahead of this being scheduled
23 for these students?

24 THE WITNESS: No, ma'am.

25 MR. ROBERTS: And may I ask a follow-up

1 question to that one?

2 HEARING OFFICER: Hold on. Let me --

3 MR. ROBERTS: Okay.

4 HEARING OFFICER: -- let me see if there
5 are any other committee -- questions from the
6 committee?

7 Mr. Roberts, go ahead.

8 RECROSS EXAMINATION

9 BY MR. ROBERTS:

10 Q Do we need to make you aware if we do open for
11 Mondays for special days, since we have our vo-tech in
12 and full-time students come in and work that day, do we
13 need to make you aware of that?

14 A Yes. I mean, if you -- if your schedule changes at
15 all, you -- you should notify the office. Yeah.

16 MR. ROBERTS: Okay. Okay.

17 HEARING OFFICER: Okay. If there are no
18 other questions for Ms. Kersey, thank you very
19 much, Ms. Kersey.

20 Ms. Pitman?

21 MS. PITMAN: I'll call Mr. Roberts now.

22 HEARING OFFICER: Okay. Go right ahead.

23 WHEREUPON,

24 MIKE ROBERTS,

25 having been called for examination, and having been first

1 duly sworn by the Hearing Officer, was examined and
2 testified, as follows:

3 DIRECT EXAMINATION

4 BY MS. PITMAN:

5 Q Mr. Robertson [sic], you said you're new to Searcy
6 Beauty --

7 HEARING OFFICER: It's Roberts.

8 BY MS. PITMAN:

9 Q Is it Roberts? I'm sorry.

10 A That's all right.

11 Q Just correct me. If I'm wrong, just correct me.
12 It's been along day.

13 A Yes, it has.

14 Q At least, you know, I wasn't calling you Mr. Mike.
15 Mr. Roberts, when did you start with Searcy Beauty
16 College?

17 A I started originally in October of 2013, and I was
18 solely there to help with the NACCAS review.

19 Q Okay.

20 A And did that through the middle of January and then
21 I went back to Dallas after that.

22 Q Okay. For my knowledge, what is the NACCAS review?

23 A That is the accrediting agency that basically
24 accredits the school.

25 Q Okay.

1 A Yeah.

2 Q So you were there to help them make sure they kept
3 their accreditation?

4 A That is correct. Yes, ma'am.

5 Q Okay. And then how did you get brought back in for
6 this issue?

7 A I was asked to come back and work on a full-time
8 basis in February.

9 Q Uh-huh.

10 A The end of February, and came back in, worked as
11 general manager, made some personnel changes, and started
12 making changes, improving the processes in reporting
13 systems that we had at that time.

14 Q Okay. And just based on some of the comments you've
15 already made, I get the impression that you may disagree
16 with some of Ms. Kersey's numbers, but you don't disagree
17 that there was some overreporting and underreporting of
18 numbers?

19 A I do not disagree with it at all. That's why we
20 went to the new time system.

21 Q Okay. And that moves me to my next question, what
22 have you done to correct that?

23 A I had a lengthy conversation with one of the owners
24 back in October, November when I had come in last year,
25 because I was concerned about the time clock system just

1 in general, without even knowing that this issue was
2 going on. And when I came back in February, that was one
3 of the first things I started doing was researching time
4 clocks. I ended up purchasing one in May, had it
5 formatted for our school, and put it in use at the end of
6 July.

7 Q Okay. Now, I don't think we covered through the end
8 of July, so --

9 A Of 2014.

10 Q 2014?

11 A So it -- the time clock was not in effect last year.

12 Q In any of the stuff that we have here?

13 A Correct. No, ma'am.

14 Q Okay. Do you know of any problems with the new time
15 clock system?

16 A I do not. It's been working wonderful. It's a
17 fingerprint system so there is no buddy punching, no
18 fraudulent activity.

19 Q And I think on Searcy Beauty College No. 3, it's a
20 detailed report?

21 A Yes, ma'am.

22 Q I just want to know what you think were the number
23 of hours that were over and underreported, where your
24 difference is with Ms. Kersey's, is that on this or --

25 A Well, this is August of 2014.

1 Q Oh, this is new. Okay.

2 A But the -- the hours with Ms. Kersey would be
3 Sundays and Mondays, that's what I have a problem with.

4 Q Okay. And why do you have a problem with those?

5 A Because it's not in our catalog, we're not open
6 Sundays and Mondays, and I know I'm falling on the sword,
7 but that's -- I -- I don't agree with the fact that those
8 hours were posted last year, so --

9 Q So they weren't posted in CLIPS?

10 A They were -- clearly they were posted in CLIPS and
11 clearly we don't have a time card to support them.

12 Q Okay. But you will agree that Ms. Kersey, and no
13 one in her staff reports hours into CLIPS, so it's not --
14 it's something from Searcy Beauty College that got --
15 misreported in CLIPS?

16 A Correct. Absolutely. Yes, ma'am.

17 Q Okay. No other questions.

18 A But which, again, goes to why we had, I think, five
19 people dismissed in the early part of this year, once it
20 was learned that we were doing that.

21 MS. PITMAN: Okay. No other questions.

22 HEARING OFFICER: Okay. Mr. Roberts, you
23 can either kind of explain your side to the
24 committee right now, or I'll let them ask you
25 some questions and then let Ms. Pitman finish

1 and then you will have a chance to tell your
2 whole side and she can follow-up with any
3 questions or the committee members can to you;
4 so --

5 MR. ROBERTS: Okay. No, I -- I think it's
6 pretty self-explanatory, so I'll just open it
7 up to the questions.

8 HEARING OFFICER: Okay. Committee
9 members, questions for Mr. Roberts?

10 MS. ANDERSON: I did do a little bit of
11 homework and I looked at your catalog, so I saw
12 where you were open Tuesday through Thursday.

13 THE WITNESS: Yes, ma'am.

14 MS. ANDERSON: But Thursday was a half
15 day. Is that still your policy, where they
16 can --

17 THE WITNESS: It's an --

18 MS. ANDERSON: -- make up hours?

19 THE WITNESS: It's an optional half day,
20 the students can go until 11:30 if they would
21 like, or they can stay until 4:30. We're open
22 until 4:30 on those days.

23 MS. ANDERSON: Okay. And you do have
24 vocational students so do you have high school
25 students as well?

1 THE WITNESS: Yes, ma'am.

2 MS. ANDERSON: So part of these students
3 are high school students?

4 THE WITNESS: Correct.

5 MS. ANDERSON: Okay. So in your recall of
6 this information, would you say 56 students
7 with too many hours?

8 THE WITNESS: Would I say that?

9 MS. ANDERSON: Would you have counted 56
10 students on this report that Ms. Kersey has
11 done when you -- I mean I understand the Sunday
12 and Monday, because that was my big question
13 when I looked at it in the beginning when it
14 was presented to us.

15 THE WITNESS: Well, I'm not -- I don't
16 dispute the report.

17 MS. ANDERSON: Okay.

18 THE WITNESS: I don't dispute it.

19 MS. ANDERSON: Okay.

20 HEARING OFFICER: Further questions from
21 the committee?

22 MS. PITMAN: Ms. Jones, as a housekeeping
23 matter, everyone has a copy of the school
24 catalog and he referred to it several times
25 today, so perhaps that should be Searcy No. 5.

1 HEARING OFFICER: Very well. That will be
2 so admitted as the Committee's Exhibit No. 5.

3 (WHEREUPON, DHS - Cosmetology Section
4 Exhibit No. 5, 21 pages, was received in
5 evidence.)

6 MS. ANDERSON: I do have another question
7 for Mr. Roberts.

8 HEARING OFFICER: Go right ahead.

9 MS. ANDERSON: Mr. Roberts, you mentioned
10 you came for the NACCAS audit?

11 THE WITNESS: Yes, ma'am.

12 MS. ANDERSON: And you were up for
13 accreditation for this year?

14 THE WITNESS: Yes, ma'am.

15 MS. ANDERSON: That I'm very familiar
16 with. You did not have any limitations at that
17 time?

18 THE WITNESS: Correct.

19 MS. ANDERSON: So did they look at your
20 hours and your attendance records then at that
21 time?

22 THE WITNESS: They did not. No, ma'am.

23 MS. ANDERSON: So how did you discover the
24 variances before this complaint? Did you
25 discover it before the complaint or you hadn't

1 discovered it until after the complaint?

2 THE WITNESS: I hadn't discovered it until
3 after it was brought to my attention with a
4 complaint. I just didn't feel comfortable with
5 the way the time cards were being handled. If
6 you will look at the --

7 MS. ANDERSON: The kind of --

8 THE WITNESS: -- the time cards from
9 December 10th, it's -- I just --

10 HEARING OFFICER: And that's -- that's
11 your Exhibit No. 4?

12 THE WITNESS: Yes, ma'am. Yes, ma'am. I
13 just didn't feel comfortable with those being
14 accurate, 100 percent accurate, so that's why I
15 wanted to go to the time clock system, because
16 that I knew that I could control and that I
17 knew that I could be the only one controlling
18 it. Because I am the only one right now that
19 can get into the time clock system.

20 MS. ANDERSON: Are you aware of Department
21 of Ed's policy about writing in hours? Are you
22 familiar with that policy?

23 THE WITNESS: No, ma'am.

24 MS. ANDERSON: You would want to check
25 that out.

1 THE WITNESS: Okay.

2 MS. ANDERSON: You would want to check
3 that out.

4 THE WITNESS: Okay. Thank you.

5 MS. ANDERSON: Especially with a biometric
6 clock.

7 THE WITNESS: I'm sorry?

8 MS. ANDERSON: Especially with a biometric
9 clock, as you have now.

10 THE WITNESS: Okay.

11 HEARING OFFICER: Further questions from
12 the committee?

13 Okay. Seeing no questions for Mr. Roberts
14 at this time, Ms. Pitman?

15 MS. PITMAN: No other witnesses.

16 HEARING OFFICER: Okay. Mr. Roberts,
17 anything else you wanted to -- to tell the
18 committee?

19 MR. ROBERTS: No, ma'am.

20 HEARING OFFICER: Okay. I'm going to give
21 everybody one last chance for questions before
22 we close this record. Okay.

23 Ms. Pitman, closing?

24 MS. PITMAN: Just reiterate my opening,
25 which is, we're here today to discuss over 100

1 students whose hours have either been
2 underreported or overreported, students who
3 have received a license without having earned
4 enough hours to actually have received that
5 license. It's a very serious matter.
6 Mr. Roberts has shown that they have corrected
7 it, it appears the corrections have not
8 resulted in any problems, so of course the
9 board should take that into consideration in
10 deciding the penalty. But I do feel these
11 students need -- especially the students that
12 have not been reported all of the hours that
13 they have earned needs -- they need to have
14 corrected hours. Okay.

15 HEARING OFFICER: Mr. Roberts?

16 MR. ROBERTS: I just would like the board
17 to know that since I've been there, we have
18 started a policy and procedures manual, which
19 as, I know, as funny as that sounds, we haven't
20 had a current one and we've been very diligent
21 in completing that. I would also like the
22 board to know that Searcy Beauty College has
23 improved significantly in the last several
24 months since I've been there, and I feel that
25 we will continue to improve.

1 HEARING OFFICER: Okay. Thank you very
2 much, Mr. Roberts.

3 At this time we'll close the record for
4 the board's recess for deliberations. Once the
5 board reaches a decision, we will go back on
6 the record.

7 (WHEREUPON, the Committee retired to
8 deliberate, off the record, from 3:52 p.m. to
9 4:08 p.m., and returned with the following
10 questions.)

11 MS. PITMAN: I would like to recall
12 Ms. Kersey.

13 WHEREUPON,

14 KELLI KERSEY,
15 having been recalled for examination, and having been
16 previously duly sworn by the Hearing Officer, was
17 examined and testified, as follows:

18 REDIRECT EXAMINATION

19 BY MS. PITMAN:

20 Q Ms. Kersey, I asked you if you recommended taking
21 hours away from students that were over corrected or over
22 reported, you said yes. Would you like to clarify that?

23 A Yes. I'm sorry. I -- I -- I don't think the
24 students should be punished at all. I think if their
25 hours have been reported, I mean, we're talking over a

1 year ago, then you don't need to take them away from
2 them. It's not their fault.

3 MS. FORD: Okay. So your --

4 THE WITNESS: I mean, they think they have
5 those hours. I think you should give them to
6 them.

7 MS. ANDERSON: Rather than take them away
8 from them?

9 THE WITNESS: The ones that are the most
10 that we're talking about are already licensed
11 anyway.

12 MS. SULLIVAN: So you don't think -- okay.
13 I think that was where -- because I think
14 earlier confused by --

15 THE WITNESS: I don't think I -- I'm
16 sorry. Yeah, I was.

17 MS. PITMAN: I think -- I think I just
18 worded my question in a way that she thought I
19 was asking something else.

20 THE WITNESS: Yeah. I'm sorry. I'm
21 sorry.

22 MS. ANDERSON: Because there's some that
23 are like a hundred hours.

24 THE WITNESS: Huh?

25 MS. ANDERSON: There is one or two of

1 these, there is one that's a hundred hours, in
2 this total of -- this good hours or bad hours.

3 THE WITNESS: I still don't think it's the
4 student's fault.

5 MS. SULLIVAN: But the ones that are
6 shorted, they need their hours.

7 THE WITNESS: Yeah, that, I agree with
8 that.

9 MS. ANDERSON: Here is one that has a
10 hundred extra hours, a bunch.

11 MR. ROBERTS: That's a key punch error.
12 If you will look at, it was 156 hours was put
13 into CLIPS, and it's really just 56 hours.

14 MS. ANDERSON: So the error was the CLIPS
15 error?

16 MR. ROBERTS: Correct, it was just --

17 MS. ANDERSON: And then you did -- but --
18 but has that student graduated?

19 MR. ROBERTS: No. That student is still
20 there and she knows that that -- she doesn't
21 get that 100 hours.

22 MS. ANDERSON: Okay. So -- so those
23 corrections do need to be made, that -- if they
24 could make that correction.

25 MR. ROBERTS: Sure. And if I could just

1 say one more thing?

2 HEARING OFFICER: Sure. While we're back
3 on the record.

4 MR. ROBERTS: The hours are not just
5 Sunday, Monday.

6 MS. ANDERSON: Correct. But those that
7 are Sunday and Monday need to be taken out?

8 MR. ROBERTS: Absolutely. Absolutely.

9 MS. ANDERSON: There is others that are in
10 different places --

11 MR. ROBERTS: Yes, ma'am.

12 MS. ANDERSON: Okay. So --

13 HEARING OFFICER: Anything else we need to
14 clarify before we go back off the record for
15 further deliberations? Everybody clear now on
16 everything?

17 MS. ANDERSON: Yes. We just need to look
18 at those.

19 HEARING OFFICER: Okay. We will close the
20 record for deliberations again.

21 (WHEREUPON, the Committee retired to
22 deliberate, off the record, from 4:10 p.m. to
23 4:18 p.m., and returned with the following
24 questions.)

25 HEARING OFFICER: So we're going to go

1 back on the record and get this --

2 MR. ROBERTS: I got --

3 HEARING OFFICER: And I think Mr. Roberts
4 may have something to offer as well, so --

5 MR. ROBERTS: I can -- if I can go first
6 so it may clear it up. Wendy, don't feel bad,
7 I have gone over these hours more than anybody
8 can imagine. The 260, I know exactly what that
9 is. The 597, I know exactly what that is.
10 Please don't feel bad, I'm prepared to talk to
11 each and every one of these students. They
12 know it's coming because, like you said, if a
13 student has not attended 260 hours, they know
14 it.

15 MS. ANDERSON: Right.

16 MR. ROBERTS: And I've gone through all of
17 this so much, so please don't feel bad.

18 MS. SULLIVAN: Thank you.

19 HEARING OFFICER: Okay.

20 MS. PITMAN: And --

21 MS. SULLIVAN: If he's good -- if he's
22 good with it, then I can deal with it, because
23 if those students are expecting it, there is a
24 little bit of a difference.

25 MR. ROBERTS: This one, the one, though,

1 Alax Pruitt, is taking the test and I think she
2 has not passed it twice, which speaks to --

3 MS. SULLIVAN: To not getting the hours.

4 MR. ROBERTS: Right. So --

5 MS. ANDERSON: Not getting the training,
6 sure.

7 MR. ROBERTS: -- if there is something
8 that we can do in that process, I may need help
9 with that.

10 MS. SULLIVAN: They may need to go back to
11 the school and not charge them.

12 MR. ROBERTS: And I don't have a problem
13 with that.

14 MS. SULLIVAN: And I think it's a good
15 idea. There is your --

16 HEARING OFFICER: Okay. Adrian, your
17 question?

18 MR. TABB: That cleared it up. I just
19 wanted to know if he could actually fix the
20 hours. If we were not going to penalize the
21 students, could there be something that he
22 could fix in house or was there something that
23 needed to be done?

24 MS. ANDERSON: But he's already done our
25 homework.

1 MR. TABB: But I understand that he's done
2 the homework, I just wanted to know if there
3 was something that he could do to fix the
4 problem.

5 MS. SULLIVAN: My original motion was
6 going to be, could we basically table this and
7 get more information and rehear it, but that --
8 that -- that was my original thought in my
9 head, but now everything else is better; so --

10 HEARING OFFICER: Ms. Pitman?

11 MS. PITMAN: He cannot go back into CLIPS
12 and re-correct it because it's after the 10th
13 of the month, he will have to get with
14 Ms. Kersey --

15 MS. SULLIVAN: Well, yeah. I mean, you
16 can just go in and ask if we could fix the
17 additional hours.

18 MS. PITMAN: He can't without us.

19 MS. ANDERSON: Right.

20 MS. SULLIVAN: But he can go through --
21 and he knows that, I'm sure, to go through them
22 to get those corrected.

23 MR. TABB: Okay.

24 MS. SULLIVAN: Correct?

25 MR. ROBERTS: Well, and I'm not going to

1 do any corrections until we're on the same
2 page.

3 MS. PITMAN: Right. Okay. So are you
4 guys -- and this may need to be clarified in
5 deliberations. There is -- he says the hours
6 are something different from what we say.
7 That's an issue of fact, you guys are the
8 finders of fact. So I need to know what you
9 want us to do with that issue of fact.

10 MS. FORD: So do we need to go through
11 each and every one of these? Is that what
12 you're asking?

13 MS. PITMAN: I don't want to say that
14 because that's going to take forever.

15 MS. SULLIVAN: If that's the case, then --

16 MS. ANDERSON: Elizabeth, when you look at
17 it, if the actual hours that were on the time
18 cards were 90 hours and 57 and the CLIPS number
19 was 90.25, there was an under issue in the
20 CLIPS.

21 HEARING OFFICER: Okay. Ms. Kersey, go
22 ahead.

23 MS. KERSEY: Could -- I'm sorry. Yeah.
24 Okay. That one particular time card was
25 submitted to me on 7/8. I just looked at my

1 notes.

2 MS. ANDERSON: Okay.

3 MS. KERSEY: That's why there wasn't a
4 time card, so the difference was the 9th, and
5 then they submitted it so I just missed that,
6 taking that off. Yeah.

7 HEARING OFFICER: I think, just trying to
8 clarify this for everybody. I think there is
9 agreement that Ms. Kersey's numbers and what
10 Mr. Roberts thinks are -- are not the same.

11 MS. KERSEY: I think they are very close.

12 MR. ROBERTS: They are close enough. They
13 are -- yes.

14 MS. KERSEY: I mean, he and are on the
15 same page --

16 MR. ROBERTS: Yes.

17 MS. KERSEY: -- we've talked several
18 times.

19 MS. SULLIVAN: I think if y'all are clear,
20 I mean, with everything, even though there are
21 some discrepancies, if y'all are both -- if
22 both of you agree that they are not that far
23 off to make a stink over. Is that --

24 MS. PITMAN: Except that we're going back
25 to crediting and taking away hours from

1 students based on some set of numbers that we
2 haven't agreed on yet.

3 MS. ANDERSON: Well, but they cannot
4 receive --

5 HEARING OFFICER: Okay. Wait. We're --
6 we're getting way into the weeds on the record
7 here.

8 MS. ANDERSON: Excuse me.

9 HEARING OFFICER: I mean --

10 MS. ANDERSON: May I ask a question?

11 HEARING OFFICER: You can ask a question,
12 yeah --

13 MS. ANDERSON: Okay, I'm going to ask a
14 question --

15 HEARING OFFICER: -- but just kind of keep
16 order and deliberations --

17 MS. ANDERSON: Okay. So on this, if a
18 student is going to attend a month, a month has
19 four weeks in it, and they are attending 40
20 hours a week, if that student has received more
21 than 40 hours per week and more than 160 hours,
22 they received too many hours, so therefore that
23 needs to be corrected. And that correction
24 needs to be done, as long as they are not
25 licensed those corrections need to be done, and

1 that's what he was sharing with us, so can we
2 not correct those hours? That's my question.

3 A student has, for a week -- or for a
4 month, they have 232 hours. The maximum they
5 probably should have, if you have four weeks in
6 a month, would be 160 hours.

7 HEARING OFFICER: Well, but not -- I
8 mean --

9 MR. ROBERTS: That could be catching up
10 from previous weeks.

11 MS. KERSEY: Well, and they can go -- you
12 can go 10 hours a day, 5 days a week.

13 MS. PITMAN: Yeah. You can get more than
14 40 and some months have more than four weeks.

15 MS. ANDERSON: Their schedule doesn't
16 state that on there.

17 MS. KERSEY: But I'm just saying you can.

18 MS. SULLIVAN: They could be on a client
19 and a little bit past time and that's going to
20 go --

21 HEARING OFFICER: Okay. Further questions
22 or comments before I close the record again for
23 y'all to deliberate this some more? Okay.
24 We'll close the record.

25 (WHEREUPON, the Committee retired to

1 deliberate, off the record, from 4:23 p.m. to
2 4:27 p.m., and returned with the following
3 motion.)

4 HEARING OFFICER: Okay. Let's go back on
5 the record for the board's decision.

6 MS. ANDERSON: All right. At this time we
7 now have a motion and Kim Ford is going to give
8 us that motion, please.

9 MS. FORD: In the matter of the Arkansas
10 Department of Health versus the Searcy Beauty
11 College, under Rule No. 7.1, which is the
12 responsibility of the school, we find that the
13 respondent -- or -- or the department has
14 proven that the charges here are substantiated
15 and we would like to fine in the amount of
16 \$13,000 for those violations of the 13 that
17 went on without the hours; and we would also
18 like to mandate that the 56 that were given too
19 many hours and the 51 that were given not
20 enough hours, that all of those hours and those
21 records for those students be corrected as
22 best, based on time cards and proper
23 documentation, and to also include that proper
24 documentation for the Sunday and Monday hours,
25 since those hours are not listed in the

1 catalog, that proper documentation be forwarded
2 over for either accredited for those hours
3 should be substantiated on those students.

4 MS. ANDERSON: And?

5 MS. FORD: And for -- and 60 -- 60 days,
6 once the hours have been corrected and a
7 correct report sent in to CLIPS, into the
8 department, that a three-month reinspection of
9 10 individual students' report in detail be
10 sent to the office; and if at that time there
11 are any mistakes or discrepancies, then a every
12 three-month inspection will be done.

13 MS. ANDERSON: For?

14 MS. FORD: For the same -- for a year.
15 For a year's period.

16 MS. ANDERSON: Okay. We've made our
17 motion, do I hear a second?

18 MR. TABB: I second it.

19 MS. ANDERSON: Adrian seconds it. So we
20 have a motion and a second, and we can now take
21 a vote. Adrian?

22 MR. TABB: Aye.

23 MS. ANDERSON: Kim?

24 MS. FORD: Aye.

25 MS. ANDERSON: Wendy?

1 MS. SULLIVAN: Aye.

2 MS. ANDERSON: The motion passes
3 unanimously, halleluiah.

4 HEARING OFFICER: Very well. Let the
5 record reflect the decision of the board is
6 unanimous; please, reduce the decision to
7 writing and make or attempt service upon the
8 parties. If the parties care to appeal the
9 decision one can be taken under the Department
10 of Health rules or the Administrative
11 Procedures Act.

12 And if there are no other questions or
13 comments pertaining to this hearing,
14 Mr. Roberts, do you understand everything in
15 that motion?

16 MR. ROBERTS: Yes, ma'am.

17 HEARING OFFICER: Do you have any
18 questions?

19 Very well, we'll close the record.

20 Thank you all very much.

21 (WHEREUPON, at 4:30 p.m., the
22 above-entitled proceedings were concluded.)

23 ---o---

24

25

1 MS. ANDERSON: Okay.

2 New officers were elected as follows:

3 Wendy Sullivan, Chair; Kim Ford, Vice Chair;

4 Trish Anderson, Secretary.

5 Ms. Kersey gave an update, they will start

6 testing the electronic inspections. A report

7 will be mailed out to the salon via email or

8 United States Postal Service.

9 Ms. Pitman: Update regarding an appeal

10 filed with the Circuit Court by Wilma Young.

11 Comments made by the public: Chris Strawn

12 asked about new rules.

13 Next meeting of the Ad Hoc Committee was

14 set for November 6, 2014.

15 No other business.

16 Meeting adjourned.

17 (WHEREUPON, at 4:42 p.m., the

18 above-entitled proceedings were concluded.)

19 ---o---

20

21

22

23

24

25

1 CERTIFICATE

2
3 STATE OF ARKANSAS)4 COUNTY OF PULASKI)
5

6 I, SUSAN B. WHITSON, Certified Court Reporter
7 and notary public in and for Pulaski County, State of
8 Arkansas, do hereby certify that the meeting and hearings
9 held before the Arkansas Department of Health,
10 Cosmetology Technical Advisory Committee, September 15,
11 2014, was taken by me in Stenotype and was reduced to
12 computer-generated typewritten form by me or under my
13 direction and supervision; that the witnesses were duly
14 sworn by the Hearing Officer; and that the same is a true
15 and correct reflection of the proceedings that occurred,
16 to the best of my knowledge and ability.

17 I FURTHER CERTIFY that I am neither counsel
18 for, related to, nor employed by any of the parties to
19 the action in which these proceedings were taken; and,
20 further that I am not a relative or employee of any
21 attorney or counsel employed by the parties hereto, nor
22 financially interested, or otherwise, in the outcome of
23 this action; and that I have no contract with the
24 parties, attorneys, or persons with an interest in the
25 action that affects or has a substantial tendency to

1 affect impartiality, that requires me to relinquish
2 control of an original transcript or copies of the
3 transcript before it is certified and delivered to the
4 custodial attorney, or that requires me to provide any
5 service not made available to all parties to the action.

6 SIGNED AND SWORN this _____ day of

7 _____.

13 _____
14 SUSAN B. WHITSON, CCR, #158

15 NOTARY COMMISSION #12388076

16 NOTARY PUBLIC IN AND FOR

17 PULASKI COUNTY, ARKANSAS

18
19 My Commission Expires: June 4, 2022.

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